Jurisdictional Statement

CASE NO. 81-776

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

TED W. BROWN, *et al.*,

Appellants,

v.

SOCIALIST WORKERS '74 CAMPAIGN COMMITTEE (Ohio) *et al.*

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

JURISDICTIONAL STATEMENT

WILLIAM J. BROWN
Attorney General of Ohio

THOMAS F. STAUB
Assistant Attorney General
Counsel of Record

GARY ELSON BROWN
Assistant Attorney General

State Office Tower
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 466-8600

Attorneys for Appellants

QUESTION PRESENTED

Whether, under the standards set forth by this Court in **Buckley v. Valeo**, 424 U.S. 1 (1976), the provisions of Sections 3517.10 and 3517.11 of the Ohio Revised Code, which require that the campaign committee of a candidate for public office file a report disclosing the full names and addresses of persons making contributions to or receiving expenditures from such committee, are consistent with the right of privacy of association guaranteed by the First and Fourteenth Amendments of the Constitution of the United States when applied to the committees of candidates of a minority party which can establish only isolated instances of harassment directed toward the organization or its members within Ohio during recent years.

PARTIES TO THE ACTION IN THE DISTRICT COURT

The plaintiffs in this action in the District Court were: the Socialist Workers '74 Campaign Committee, Meyer Alewitz; Nancy Brown, Socialist Workers Party candidate for Governor of Ohio; Phil Lazar, Socialist Workers Party candidate for United States Senator from Ohio; Charles Mitts, Socialist Workers Party candidate for United States House of Representatives from the First Congressional District of Ohio; Marguerite Snyder, Socialist Workers Party candidate for United States House of Representatives from the Twenty-first Congressional District of Ohio; Bernie Senter, Socialist Workers Party candidate for the United States House of Representatives from the Twenty-third Congressional District of Ohio; Herman Kirsh, Socialist Workers Party candidate for Lieutenant Governor of Ohio; Carol Knoll, Socialist Workers Party candidate for Attorney General of Ohio; J. Doe; a contributor to the Socialist Workers '74 Campaign Committee (Ohio); J. Roe, a non-contributor to the Socialist Workers '74 Campaign Committee (Ohio);

J. Soe; a person to whom an expenditure was disbursed by the Socialist Workers '74 Campaign Committee (Ohio); the Socialist Workers Campaign Committee; Robert Bresnahan, Socialist Workers Party candidate for Mayor of Cleveland, Ohio; Christine Gauvreau, Socialist Workers Party candidate for the Cleveland Ohio School Board; and Ernest Mailhot. In addition, the District Court certified a class of plaintiffs consisting of all Socialist Workers Party candidates for Ohio state-wide or local elected political office, their campaign committees, their campaign treasurers, and the people who contribute to or receive disbursements from their campaign committees.

The original defendants in this action, who were named in both their official and individual capacities, were Ted W. Brown, Ohio Secretary of State, and the members of the Ohio Elections Commission, Nolan W. Carson (Chairman), Barbara Rodemeyer, Charles E. Shanklin, Alexander Prisley, and Daniel O'Loughlin. During the pendency of the action in the District Court, the terms of the various members of the Ohio Elections Commission expired and their successors in office became parties to the action in their official capacities. The successors in office to the members of the Commission originally named as parties were: William W. Taft (Chairman), Lloyd George Kerns, C. William Brownfield, Joel H. Mirman, Phyllis S. Nedelman, Robert McAllister, and Randall W. Sweeney. All of these individuals have since been succeeded in office by the current members of the Ohio Elections Commission, who are parties to this action in their official capacities. The current members of the Commission are: Mary Jane McDonald (Chair), Leo Blackburn, Martin J. Hughes, Harold T. Duryee, and Thomas Kaplin.

Ted W. Brown has also been succeeded in office by Anthony J. Celebrezze, Jr., Ohio Secretary of State, who is a party to this action in his official capacity.

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CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

TED W. BROWN, *et al.*,

Appellants,

v.

SOCIALIST WORKERS '74 CAMPAIGN COMMITTEE (Ohio) *et al.*

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

JURISDICTIONAL STATEMENT

The appellants, the Secretary of State of Ohio and members of the Ohio Election Commission, respectfully submit this jurisdictional statement in support of their appeal of the decision of the United States District Court for the Southern District of Ohio, Eastern Division.

OPINION BELOW

The opinion of the United States District Court for the Southern District of Ohio, Eastern Division, dated June 25, 1981, appears in the appendix hereto, p. A-2, *infra*. This decision has not been reported.

JURISDICTION

The District Court held that the appellees' claim for relief arose under 42 U.S.C. Section 1983, and found jurisdiction under 28 U.S.C. Sections 1343 (3), 2201 and 2202. A Three-Judge Court was convened under the provisions of 28 U.S.C. 2281.[1]

The judgment of the District Court, declaring Sections 3517.10 (B) (4) (b), (5) (b) and 3517.11 Ohio Revised Code unconstitutional as applied to the appellees' class, and enjoining appellants from requiring members of the class to comply with the requirement of Section 3517.10 Ohio Revised Code that the full name and address of each person making a contribution to or receiving an expenditure from a Socialist Workers Party candidate's campaign committee be disclosed in public filings with the Secretary of State and county boards of election, was entered on June 25, 1981. See p. A-29 *infra.*

Pursuant to the provisions of 28 U.S.C. Section 2101 (b) a notice of appeal to this Court was duly filed in the United States District Court for the Southern District of Ohio, Eastern Division on August 21, 1981. See p. A-30 *infra.*

This appeal is being docketed within sixty days from the filing of the notice of appeal in the District Court. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1253.

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1. Section 2281 was repealed effective August 12, 1976, but the repeal was not applicable to any case commenced on or before that date. Pub. L. 94-381.

CONSTITUTIONAL PROVISIONS AND STATUTES

First Amendment, United States Constitution:

Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section 1, Fourteenth Amendment, United States Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 3517.10, Ohio Revised Code:

This statute is set forth in the appendix hereto, p. A-33 *infra.*

Section 3517.11, Ohio Revised Code:

This statute is set forth in the appendix hereto, p. A-37 *infra.*

STATEMENT OF THE CASE

This case was initiated on October 24, 1974, by the filing of a complaint in the United States District Court for the Northern District of Ohio, Eastern Division. Named as plaintiffs were various candidates, campaign

committees, and campaign treasurers associated with the Socialist Workers Party, together with persons who had made contributions to or received disbursements from such organizations. Named as defendants were the Ohio Secretary of State and members of the Ohio Elections Commission. The complaint challenged the constitutionality of certain of the provisions of Chapter 3517. Ohio Revised Code, the Ohio Campaign Finance Reporting Act, insofar as they required the disclosure of the identities of persons making contributions to or receiving disbursements from plaintiff committees.

Subsequently, the case was transferred to the United States District Court for the Southern District of Ohio, Eastern Division, and a Three-Judge Court was convened pursuant to the provisions of 28 U.S.C. Section 2281.

The District Court did not certify to the Ohio Attorney General, pursuant to the provisions of 28 U.S.C. 2403 (b) the fact that the constitutionality of certain sections of the Ohio Revised Code was drawn in question in this action. The provisions of 28 U.S.C. 2403 (b) were inapplicable since the Ohio Secretary of State and the members of the Ohio Elections Commission were parties to this action.

Section 3517.10 of the Ohio Revised Code requires campaign committees and political parties to file reports setting forth information concerning their receipts and expenditures. Among the information which must be submitted are the names and addresses of persons who make contributions (with the exception of contributions of twenty-five dollars or less made in connection with any one fund raising event) and the name and address of each person to whom disbursements were made. The required reports are prepared on forms prescribed by the Secretary of State. Pursuant to the provisions of R.C. 3517.11 those reports which relate to the nomination or election of state-wide candidates must be filed with the Secretary of State. Otherwise, they must be filed with the Board of Elections of the applicable county.

The matter came to trial on February 23, 1981. Evidence introduced at trial indicated that the Socialist Workers Party is a small, minor political party with branches in three Ohio cities; Cleveland, Toledo, and Cincinnati. The Cleveland branch has approximately 26 members, the Toledo branch 12, and the Cincinnati branch 20. Party members carry out political activities to further their political views and to win people over to their ideas. The national party publishes both an English and a Spanish language newspaper. In New York the party has a publishing house for books and pamphlets. The Ohio branches operate bookstores to sell the political literature. As a regular part of its activities, the Socialist Workers Party regularly fields candidates for local, state, and national political offices. While the party itself has a small membership, its candidates can have a significant impact in close elections. The Socialist Workers Party candidate for United States Senate from Ohio in 1980, for example, received approximately 77,000 votes.

The evidence presented to the District Court concerning harassment of the Socialist Workers Party and its members fell into three main categories. First, appellees submitted documentary evidence relating to activities of the Federal Bureau of Investigation concerning the Socialist Workers Party during the 1960's and early 1970's. Secondly, they submitted testimony and certain exhibits concerning instances of harassment occuring outside the State of Ohio. Third, appellees submitted evidence concerning a few isolated instances of alleged harassment occuring within Ohio during recent years.

The first category of evidence submitted by appellees consisted of material relating to disruptive activity conducted by the Federal Bureau of Investigation involving the Socialist Workers Party during the 1960's and early 1970's. Most of the material related to a period of time ten to twenty years in the past. Appellees did

not submit any evidence at all concerning this alleged governmental harassment dating from recent years. The most recent evidence presented on this point concerned activities which allegedly occurred near the cessation of the Bureau's surveillance program in 1976, nearly five years prior to trial.

The second category of evidence submitted by appellees consists of materials relating to occurrences transpiring outside of the State of Ohio, in such diverse locations as New York, Georgia, and Minnesota. The incidents of harassment testified to by witnesses such as Andree Kahl-Morgan, Milak Miah and Linda Morbacher, all Socialist Workers Party members, either transpired at party headquarters (locations which were highly publicized) or involved active individual party members who were taking part in activities such as open distribution of party literature. Andree Kahl-Morgan testified that she had been dismissed by her employer in Georgia, but admitted that she had falsified her employment application concerning her level of previous experience.

The final category of evidence submitted at trial by appellees involves matters which occurred within the State of Ohio. This evidence related to two general areas; allegations of harassment directed against active party members or party headquarters, and purported dismissals from employment due to party membership.

Appellees presented the testimony of John Powers, who has been a party member for 16 years, and has been a Socialist Workers Party candidate in numerous elections, including the 1980 United States Senate race in Ohio. Mr. Powers testified that on two occasions during the summer of 1980 comments concerning his party affiliation were made to him by suburban Cleveland policemen while he was engaged in photographing picketing activity by striking employees at a local plant. Mr. Powers also testified that he actively engaged in political discussions

with co-workers at his place of employment, and had informed them of his party membership; and that his photograph had appeared in campaign literature and newspapers during the course of his 1980 Senate campaign.

Testimony was also presented concerning isolated instances of alleged harassment transpiring at Socialist Workers Party headquarters located in Cleveland and Cincinnati. Eric Schwing stated that in July of 1980 he saw two individuals in "Nazi uniforms" in an automobile outside of the party's headquarters in Cleveland. This occurrence transpired on a date when Mr. Powers was scheduled to deliver a previously publicized speech, which, in fact, took place without incident. Appellees offered the testimony of Thabo Ntweng, who stated that while working at Cleveland party headquarters (which is listed in the telephone directory under the heading "Socialist Workers Party") subsequent to the 1980 Presidential election he received two disparaging telephone calls concerning Andrew Pulley, the party's 1980 Presidential candidate. Mr. Ntweng also testified that he received two other unpleasant phone calls while answering the telephones at party headquarters which were directed at the party in general. None of these calls were directed to Mr. Ntweng personally. Witness Elizabeth Myers, chairwomen of the Cincinnati branch of the party, identified a letter, characterized as "a piece of hate mail", which was received at party headquarters. This letter was not addressed to any individual, but was directed generally to the "Socialist Workers Party". Ms. Myers also testified that the Cincinnati party headquarters is listed in the city's telephone directory, and that "several times" during the last two years she had received "threats over the telephone" while working at party headquarters. She stated that these calls had been directed to the party in general (rather than to her as an individual), and that nothing had ever been done to carry out any of the alleged threats.

Appellees presented the testimony of several witnesses who were dismissed by their employers in Cleveland and Cincinnati. Louise Haberbush testified that she was a party member, and that she was dismissed by the Alcoa Company in Cleveland during the initial thirty day probationary period following her employment. However, plaintiffs did not introduce any evidence which would establish that Ms. Haberbush was dismissed because of her party membership.

Charles R. Mitts and Ernest Abdo testified that they were party members, and they were dismissed from employment by the Lodge and Shipley Company of Cincinnati following altercations with other employees concerning their political beliefs. Mr. Mitts stated that in connection with his party membership he had taken part in activities such as attendance at public meetings, working in the party bookstore, and distribution of leaflets. He also stated that while employed at Lodge and Shipley he had discussed his political beliefs with co-workers. Mr. Abdo testified that other party members with whom he worked at Lodge and Shipley are still employed by the company.

Sherri Katz testified that she is currently a member of the Socialist Workers Party, and that during her high school years and first year of college she had been a "very active" member of the Young Socialist Alliance (the party's youth group), attending functions such as public meetings, "educational events," and "forums" on a regular basis. She also stated that she had been very active in various groups which had sponsored antiwar activities during the period of the United States' involvement in the Vietnam conflict. Ms. Katz testified that during the summer of 1976, between her second and third years of law school, she had applied for a summer clerkship with the Office of the United States Attorney in Cincinnati, but that she had been denied employment subsequent to the conduct of a government security investigation concerning her background.

Appellants introduced into evidence at trial copies of the nominating peitions filed with the Office of the Secretary of State in connection with the candidacies of appellees Hirman Kirsh and Nancy Brown Lazar. Each petition contained the signatures and addresses of more than five thousand supporters of the candidate. Each of the many Socialist Workers Party candidates who run for office must, under the requirements of Ohio's Election Law, submit similar petitions, signed by registered voters, in order to have his or her name placed on the ballot. Under the provisions of Chapter 3513. of the Ohio Revised Code, these nominating petitions, like the financial reports of campaign committees, are open to public inspection at the various County Boards of Election and the Office of the Secretary of State. Appellees introduced no evidence showing any harassment of individuals who had signed nominating petitions of Socialist Workers Party candidates.

The question presented to this Court was first raised in the District Court by the filing of the complaint, in which it was alleged that the provisions of R.C. 3517.10 and 3517.11 were unconstitutional when applied to require the disclosure of names and addresses of persons who contributed to and received disbursements from Socialist Workers Party campaign committees. At all stages of this litigation appellants have denied this contention.

The District Court in its decision of June 25, 1981, ruled that Sections 3517.10 (B) (4) (b) and 3517.11 Ohio Revised Code are unconstitutional as applied to the appellee class, and enjoined appellants from requiring members of the class to comply with the requirement of Section 3517.10 Ohio Revised Code that the full name and address of each person making a contribution to or receiving an expenditure from a Socialist Workers Party candidate's campaign committee be disclosed in public filings with the Secretary of State and county boards of election.

THE QUESTION IS SUBSTANTIAL

The standards governing the resolution of actions involving challenges to reporting requirements by minority parties were set forth by this Court in the case of **Buckley v. Valeo**, 424 U.S. 1 (1976). In **Buckley** the Court held that in order to receive relief from reporting requirements such as those at issue in this action a minority party must establish ". . .a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment or reprisals from either Government officials or private parties." 424 U.S. at 74. Appellants submit that the evidence introduced at trial in this matter was not sufficient to establish that such a probability exists, and that the District Court did not properly apply the standards set forth by this Court in **Buckley v. Valeo**, *supra.*

This Court has long recognized that the compelled disclosure of an individual's affilliation with a group engaged in advocacy may unconstitutionally infringe upon the freedom of association guaranteed under the First Amendment to the Constitution of the United States. **NAACP v. Alabama**, 357 U.S. 449, 462 (1958); **Pollard v. Roberts**, 283 F.Supp. 248, 258 (E.D. Ark. 1968) (three-judge court), *affirmed per curiam*, 393 U.S. 14 (1968). However, in **Buckley v. Valeo**, *supra*, this Court discussed the nature of the governmental interests involved in requiring campaign finance reporting, and held such interests to be compelling in nature. The decision states, in relevant part:

> The strict test established by **NAACP v. Alabama** is necessary because compelled disclosure has the potential for substantially infringing the exercise of First Amendment rights. But we have acknowledged that there are governmental interests sufficiently important to outweight the possibility of infringement, particularly

when the 'free functioning of our national institutions' is involved. **Communist Party v. Subversive Activities Control Bd.**, 367 U.S. 1, 97 81 S.Ct. 1357, 1411, 6 L.Ed.2d 625 (1961).

The governmental interests sought to be vindicated by the disclosure requirements are of this magnitude. They fall into three categories. First, disclosure provides the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' in order to aid the voters in evaluating those who seek . . . office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return. And, as we recognized in **Burroughs v. United States**, 290 U.S., at 548, 54 S.Ct., at 291, Congress could reasonably conclude that full disclosure

during an election campaign tends 'to prevent the corrupt use of money to affect elections.' In enacting these requirements it may have been mindful of Mr. Justice Brandeis' advice:

> 'Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.'

Third, and not least significant, record keeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations . . ..

Buckley v. Valeo, 424 U.S. 1, 66-69 (1976) (footnotes deleted).

The Court went on to discuss the relationship of the three compelling governmental interests to minority parties. While refusing to allow a blanket exemption from disclosure requirements, the Court in **Buckley** established a standard under which they may obtain relief:

> We recognize that unduly strict requirements of proof could impose a heavy burden, but it does not follow that a blanket exemption for minor parties is necessary. Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties. The proof may include, for example,

> specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats or specific manifestations of public hostility may be sufficient.

Buckley v. Valeo, 424 U.S. 1, 74 (1976).

While this Court in **Buckley** stated that evidence of past harassment may be presented by plaintiffs in cases such as the instant one, it is submitted that the test to be applied remains one which is *prospective* in nature. Plaintiffs in such actions face a burden of proof which requires them to show the "reasonable probability" that the disclosure of the names and addresses of individuals making contributions to and receiving disbursements from their campaign committees will result in threats, harassment, or reprisals being directed against these individuals. Plaintiffs must establish that such a situation exists at the present time within the jurisdiction in which the action is brought, not merely that it may have existed at some time in the past or that it may exist in some other area.

It is submitted that the District Court in this matter erred in its application of the standard set forth by this Court in **Buckley v. Valeo**, *supra*, and that the relevant evidence before the District Court was woefully insufficient to establish that appellees' compliance with the disclosure requirements of Section 3517.10 of the Ohio Revised Code would result in the harassment of persons in Ohio making contributions to or receiving disbursements from their campaign committees. Much of the evidence before the District Court involved occurrences which transpired totally outside the State of Ohio, or took place ten to twenty years prior to trial. With respect to matters transpiring within the State of Ohio during recent years, appellees merely presented evidence showing a few isolated instances of harassment. The evidence

disclosed one "crank" letter, and a few similar phone calls during recent years directed to the organization in general. Appellees presented testimony concerning alleged harassment prior to one previously publicized public event at the party's Cleveland headquarters. Finally, appellees submitted evidence involving isolated instances of purported minor harassment by two individual police officers during a period of labor unrest, and alleged loss or denial of employment on the part of party members during the period from 1976 to the present. It should be noted that these occurrences involved highly vocal and publicly active party members such as John Powers, Charles Mitts, and Sherri Katz. It is submitted that evidence concerning a few isolated instances involving alleged minor harassment of the party generally, or of members who voluntarily seek and maintain a degree of public visibility concerning their controversial political views, has virtually no bearing upon the question of whether persons who merely contribute private financial support to the organization would be subjected to threats or harassment resulting from appellees' compliance with the financial disclosure provisions of Section 3517.10 of the OhioRevised Code. Moreover, the evidence submitted involved only isolated instances of alleged harassment, and was insufficient to establish any ongoing pattern of harassment by government officials or private parties during recent years. In sum, the extreme paucity of evidence presented by the plaintiffs in this case falls far short of the legal standard enunciated by this Court in **Buckley v. Valeo**, *supra*, and, as such, the remedy afforded plaintiffs by the Court below was totally inappropriate.

Appellants introduced into evidence before the District Court the nominating petitions filed with the Office of the Secretary of State in connection with the candidacies of appellees Herman Kirsh and Nancy Brown Lazar. Each petition contains the signatures of more than five thousand supporters of the candidate. Each of the many Socialist Workers Party candidates who run for

office must, under the requirements of Ohio's Election Law, submit similar petitions, signed by registered voters, in order to have his or her name placed on the ballot. Each signatory must sign a statement which reads, "We, the undersigned, qualified electors. . . certify said person is, in our opinion, well qualified to perform the duties of the office or position to which he desires to be elected." Under the provisions of Chapter 3513. of the Ohio Revised Code, these nominating petitions, like the financial reports of campaign committees, are open to public inspection at the various County Boards of Election and the Office of the Secretary of State. Under the theory advanced by the appellees in this case, the signers of nominating petitions, who publicly declare their support for the Socialist Workers Party, would be subject to the same harassment as contributors identified on campaign finance reports. However, no evidence was introduced before the District Court showing harassment of individuals who signed nominating petitions of Socialist Workers Party candidates. In the absence of such evidence the District Court should have concluded that signers of petitions and contributors do not face a probable threat of harassment in Ohio resulting from public disclosure of their identities.

The District Court in this case was presented with a situation virtually identical to that before another District Court in **Oregon Socialist Workers 1974 Campaign Committee, et al. v. Paulus**, 432 F. Supp. 1255 (three-judge court, D. Ore. 1977). After examining the evidence presented in the case, the Court refused to enjoin the enforcement of the Oregon disclosure requirements stating:

> . . .[W]e find by a preponderance of the evidence that there exists no 'reasonable probability' that disclosure of the names of contributors to the SWP will result in official or unofficial harrassment of these contributors. Each instance of alleged

harassment set out in plaintiffs' affidavits is insufficient by itself to justify the conclusion that the valid governmental interests in disclosure are outweighed by the First Amendment rights of potential SWP supporters. A review of the evidence fails to reveal, moreover, any pattern of prior conduct, either public or private, of sufficient severity to meet the standard of proof of **Buckley**. The evidence shows, at most, a few isolated cases of the receipt of highly critical and negative telephone calls and letters. Most of these calls and letters have not been shown to be the result of SWP support as such, but are at least as likely to be the product of the other political activities of the affiants. Further, plaintiffs have made no showing of any present official investigation by either the FBI or the Portland Police Bureau.

*** *** ***

We find that the valid governmental interests recognized in **Buckley** outweigh the very minimal impact on First Amendment rights demonstrated by plaintiffs. The Court in **Buckley** noted, 'The sources of a candidate's financial support . . . . alert the voter to the interests to which a candidate is most likely to be responsive . . ..' 424 U.S. at 67, 96 S.Ct. at 657. We feel that persons supporting specific parties and candidates should be willing to 'stand up and be counted'. In our democracy, the voting public is entitled to know what special interests are behind a potential office holder. The **Buckley** decision demonstrates that certain respon-

> sibilities, such as disclosure, can constitutionality be imposed on the exercise of First Amendment freedoms. Plaintiffs have failed to show that future disclosure of the identities of their contributors will subject these contributors to 'threats, harassment or reprisals from either Government officials or private parties'. 424 U.S. at 74, 96 S.Ct. at 661.

Oregon Socialist Workers v. Evans, 432 F. Supp. 1255, 1259 (1977).

In contrast to the Court in **Oregon Socialist Workers' 74 Campaign Committee, et al. v. Paulis**, *supra*, the District Court in the case at bar failed to require the appellees to demonstrate a causal relationship between the disclosure requirements of the Ohio Campaign Finance Reporting Act and the prospective likelihood of the harassment of Socialist Workers Party Members or contributors within Ohio. Instead of correctly applying the "pattern of threats" standard established by this Court in **Buckley v. Valeo**, *supra*, the District Court erroneously granted the appellees the injunctive relief which they sought based on very stale "historical" evidence of governmental activity relating to the Socialist Workers Party, together with a very few isolated instances of harassment directed toward the party and its members resulting from political activities other than compliance with campaign finance reporting requirements. The decision of the District Court in this matter was erroneous, and, it is submitted, should be reversed by this Court.

CONCLUSION

For the reasons set forth above, this Court should note probable jurisdiction of this appeal. Review by this Court will not only resolve the particular issues in this controversy, it will also further illuminate the legal standard to be followed by courts in all future cases involving Constitutional challenges of campaign finance reporting requirements by minority parties and their contributors.

Respectfully submitted,

WILLIAM J. BROWN
Attorney General of Ohio

THOMAS F. STAUB
Assistant Attorney General

GARY ELSON BROWN
Assistant Attorney General

State Office Tower
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 466-8600

Attorneys for Appellants

Appendix

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action C-2-75-92

SOCIALIST WORKERS '74 CAMPAIGN COMMITTEE (Ohio), et al.

Plaintiffs,

vs.

TED W. BROWN, et al.

Defendants.

ORDER

Filed June 25, 1981 2:22 p.m.

Sections 3517. 10 (B) (4) (b), (5) (b) and 3517.11, Ohio Revised Code are DECLARED unconstitutional as applied to the plaintiff class. Defendants are ENJOINED from requiring members of the plaintiff class to comply with the requirement of Section 3517.10 (B) (4) (b), (5) (b) that the full name and address of each person making a contribution to or receiving an expenditure from a Socialist Workers Party candidate's campaign committee or the Socialist Workers Party be disclosed in public filings with the Secretary of State and county boards of election.

/s/ John W. Peck
John W. Peck
Senior Circuit Judge
United States Court of Appeals
for the Sixth Circuit

/s/ Joseph P. Kinneary
Joseph P. Kinneary
United States District Judge

/s/ Robert M. Duncan
Robert M. Duncan
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action C-2-75-92

SOCIALIST WORKERS '74 CAMPAIGN COMMITTEE (Ohio), et al.

Plaintiffs

vs.

TED W. BROWN, et al.

Defendants

OPINION

Filed June 25, 1981

Before John W. Peck, Senior Circuit Judge, Unitied States Court of Appeals for the Sixth Circuit; Joseph P. Kinneary, United States District Court Judge; and Robert M. Duncan, United States District Court Judge.

Kinneary, District Judge. This is an action for a declaration that the requirement of Sections 3517.10 and 3517.11, Ohio Revised Code that a candidate for political office must file public statements identifying the full name and address of each person who makes a campaign contribution or receives disbursement of campaign funds is unconstitutional as it applies to Socialist Workers Party candidates and to enjoin enforcement of those provisions of the Ohio Campaign Expense Reporting Law.

A Three-Judge Court was convened under the provisions of 28 U.S.C. Section 2281.[1] Calloway v. Briggs,

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1. Section 2281 was repealed effective August 12, 1976, but the repeal is not applicable to any case commenced on or before that date. Pub. L. 94-381.

443 F.2d 296 (6th Cir. 1971). The claim for relief arises under 42 U.S.C. Section 1983, and the Court has jurisdiction under 28 U.S.C. Sections 1343 (3), 2201 and 2202.

Upon consent of the parties and the members of this panel, the factual issues in this case were tried before the Honorable Joseph P. Kinneary, United States District Judge, *see,* **Rosado v. Wyman,** 397 U.S. 397, 403 (1970), who made the findings of fact set out below which are adopted fully by the Three-Judge District Court.

MOTION TO CERTIFY CLASS

Plaintiffs move to certify the class of all Socialist Workers Party (SWP) candidates for political office in Ohio, their campaign committees, their compaign treasurers, and people who contribute to or receive disbursements from SWP compaign committees. Defendants oppose certification on the following grounds: (1) The motion was not filed until more than six years after the transfer of the case to this Court in contravention of S.D. Ohio R 3.9.3; (2) class designation is not necessary and would be a useless formality because a declaration that Sections 3517.10 and 3517.11 are unconstitutional would bind them with respect to people similarly situated; (3) plaintiffs have not established numerosity; and (4) effective notice cannot be given class members because of plaintiffs' failure to file a timely motion.

This suit was filed as a class action. Discovery and all pretrial proceedings have proceeded as if this were a class action. On February 14, 1975 a temporary restraining order was filed which has been given class-wide effect by the parties. No SWP candidate has filed the disclosure statements required by Sections 3517.10 and 3517.11 since then. The case was tried as a class action. Defendants have not demonstrated any prejudice from plaintiffs'

delay in filing the motion to certify, and neither Rule 23, Fed. R. Civ. P. nor the case law prohibits class certification following trial. **Alexander v. Aero Lodge No. 735, International Association of Machinists and Aerospace Workers**, 565 F.2d 1364, 1372 (6th Cir. 1977), *cert. denied*, 436 U.S. 946 (1978); **Senter v. General Motors Corp.**, 535 F.2d 511, 522 (6th Cir. 1976).

Although defendants concede that "a decision by this court granting the relief sought by the plaintiffs would affect defendants not just with respect to the plaintiffs but also with respect to others in plaintiffs' position, if any", [2] plaintiffs are entitled to a clear declaration of their rights in a class suit with membership in the class defined by the Court. This is inherently a class action. As will be discussed in greater detail below, the applicable constitutional test is whether there is "a reasonable probability that the compelled disclosure" of the names and addresses of present and future contributors "will subject them to threats, harassment or reprisals from either government officials or private parties." **Buckley v. Valeo**, 424 U.S. 1, 74 (1976). Defendants correctly argue that in determining whether plaintiffs are entitled to injunctive relief under this standard the Court must look to 1981 to determine whether plaintiffs now will be restricted in exercising their right to freedom of association if the names of SWP campaign contributors are disclosed in the filings required by the Ohio Campaign Expense Reporting Law. Plaintiffs seek to protect their continuing associational rights. Those rights cannot be adequately protected unless there is a class certification.

Rule 23 (a) (1), Fed. R. Civ. P. provides that the representative plaintiffs must demonstrate that "the class is so numerous that joinder of all members is impractic-

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2. Defendants' March 16, 1981 Memorandum in Opposition to Motion to Certify, p. 3, lines 7-11.

able. . . ." A class as small as 35 identified members satisfies the requirements of Rule 23 (a) where it includes prospective members. See, **Cross v. National Trust Life Insurance Company**, 553 F.2d 1026, 1030 (6th Cir. 1977). When injunctive relief is sought, the Court should not place undue emphasis on the number of identified members of the class. **Horn v. Associated Wholesale Grocers**, 555 F.2d 270, 275 (10th Cir. 1977); **Wright v. Stone Container Corp.**, 524 F.2d 1058, 1062 (8th Cir. 1975).

The Socialist Workers Party has sixty some members in Ohio. They regularly participate in SWP election campaigns. Every election the SWP may field candidates for state and local offices. Each candidate necessarily has his or her own campaign committee, campaign treasurer, contributors, and recipients of campaign funds. Under these circumstances, joinder of all members of the class is impracticable.

Finally, there is no requirement that notice of this suit be given to all members of the class. Rule 23 (c) (2) provides that notice must be given to all members of a (b) (3) class, but this is a (b) (2) class. In its discretion, the Court may give notice to (b) (2) class members, Rule 23 (d) (2), Fed. R. Civ. P., but such notice is not a prerequisite for class certification. 7A WRIGHT & MILLER, FEDERAL PRACTICE and PROCEDURE: Civil Section 1786, p. 144 at n. 7 (1972 with 1980 supplement). **Alexander v. Aero Lodge No. 735 International Association of Machinists and Aerospace Workers**, 565 F.2d at 1373-1374. Here, notice is not required to protect the interests of the class members since they are well-protected by plaintiffs' counsel and the interests of the representative parties are strongly concurrent with those of the absent class members.

In conclusion, plaintiffs have satisfied each of Rule 23 (a)'s four prerequisites to a class action. Further, plaintiffs meet the requirement of Rule 23 (b) (2) because defendants have acted "on grounds generally applicable

to the class" by applying the disclosure provisions of the Ohio Campaign Expense Reporting Law to SWP candidates' campaign contributions and expenditures. Accordingly, plaintiffs' motion to certity the class is GRANTED. The Court hereby certifies the following class: All Socialist Workers Party candidates for Ohio state-wide or local elected political office, their campaign committees, their campaign treasurers, and the people who contribute to or receive disbursements from their campaign committees.

ADMISSIBILITY OF EVIDENCE

Before setting out the findings of fact, the Court will rule on defendants' objections to the exhibits plaintiffs offered at trial. First, defendants object to plaintiffs' Exhibits 1 through 109, 112, 113 and 134 (FBI records from the early 1960's through 1976) on the ground that they are irrelevant to the issues in this case. In **Buckley v. Valeo**, 424 U.S. at 74, the United States Supreme Court held that minor parties may prove that their associational rights are injured by disclosure laws through "evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself." Under Rule 401, Fed. R. Evid. evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." All relevant evidence is admissible except as otherwise provided by law. Rule 402, Fed. R. Evid. Plaintiffs' Exhibits 1 through 109, 112, 113, and 134 meet this threshhold test; accordingly, defendants' objection to their admissibility is overruled.

Defendants object to the plaintiffs' Exhibit 110, the Breitel report, on the grounds that it is not properly authenticated, its contents are inadmissible hearsay, and it was prepared as a sanction against a party in litigation

to which the State of Ohio was not a party. In **Socialist Workers Party, et al. v. The Attorney General of the United States, et al.**, 73 Civ. 3160 (TPG) (S.D. N.Y. filed 1973), a suit alleging that the FBI harassed the SWP, burglarized its offices, and deprived its members of associational and other constitutional rights, the trial judge ordered the Government to turn over to plaintiffs 18 informant files which the Government had selected as representative. **Socialist Workers Party v. Attorney General of the United States**, 458 F.Supp. 895, 898-899 (S.D. N.Y. 1978), *reversed*, 596 F.2d 58 (2d Cir.), *cert. denied*, 444 U.S. 903 (1979). The Government refused, asserting the informant's privilege. 458 F.Supp. at 899. The trial judge then held the Attorney General of the United States in contempt, but the United States Court of Appeals for the Second Circuit vacated that order and remanded the case for the district court to fashion a remedy which would put plaintiffs in the position they would have been in had the Government turned over the informant files. *In re* **Attorney General of the United States**, 596 F.2d 58, 67 (2d Cir.), *cert. denied*, 444 U.S. 903 (1979). The trial judge then appointed the Honorable Charles D. Breitel, a distinguished New York jurist, as special master to review the informant files and prepare a report disclosing the essential information in them to plaintiffs. Either Judge Breitel or a member of his staff[3] read the informant files.[4] Plaintiffs' Exh. 110, pp. 4-5. He then reported his findings to the trial court in a written report which was adopted by the trial judge after a hearing. The report also includes admissions made by the Government.

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3. Judge Breitel personally briefed each file reviewer on the nature and background of the reference and the issues involved in the case. A memorandum of instructions was also available to the file reviewers. They took notes while they read the files. Plaintiffs' Exh. 110, p. 5.

4. Four of the 18 informant files were voluntarily given plaintiffs by the Government, so Judge Breitel and his staff reviewed 14 informant files which contained hundreds of volumes.

Plaintiffs' Exhibit 110 has been certified by a deputy clerk of the United States District Court for the Southern District of New York as a true copy of Judge Breitel's February 4, 1980 final report to the district court. Thus, the report is properly authenticated under Rule 902 (4), Fed. R. Evid. Plaintiffs contend the report is admissible as an exception to the hearsay rule under Rule 803 (8) which provides:

> The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
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> . . .
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> (8) **Public records and reports.** Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth . . . (C) in civil actions . . . factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicates lack of trustworthiness.

Reports (including disputed fact findings) of administrative agencies are admissible in subsequent civil suits. **Chandler v. Roudebush,** 425 U.S. 840, 863, n. 3 (1976); **United States v. School District of Ferndale,** 577 F.2d 1339, 1354 (6th Cir. 1978). A special master's report to a trial court may not literally be a report of a public office or agency, but the trustworthiness guarantees of such a report are at least as great. *See,* 4 WEINSTEIN & BERGER, WEINSTEIN'S EVIDENCE PARA 803 (8) [02] at pp. 803-199 and 803-200 (1979 with December, 1980 supplement).

The informant files which are the subject of Judge Breitel's report are the same type of record which are contained in plaintiffs' Exhibits 1 through 109, 112,

113, and 134. Those FBI records are authenticated xeroxes of the originals with privileged information deleted.[5] Instead of having the censored copies of the original FBI documents discovered in the Southern District of New York litigation, we have Judge Breitel's detailed summary of the files. There is no reason to believe that an experienced judge's report on the contents of FBI documents (he having had an opportunity to view the originals) would be substantially less accurate or trustworthy than heavily censored xeroxes of the originals. A guarantee of the accuracy of the report is the fact that the Government had an opportunity to review a draft and suggest corrections to the Special Master. Further, the district court held an adversary hearing before accepting the report.

There is nothing in Rule 803 (8) which requires that the party opposing introduction of the report must have been a party to the administrative proceeding. The guarantee of the accuracy and trustworthiness of the facts found in the report comes from the official nature of the investigation and the legal authority for the investigation. The adversariness of the proceeding, the official's access to information, his expertise, and so forth are factors relevant to determining whether the report lacks trustworthiness. In our case, the Government's interest in contesting the suit against it in the Southern District of New York is at least as strong as any interest defendants herein would have in assuring the accuracy

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5. During discovery in this case, plaintiffs sought FBI records of surveillance and harassment of the SWP and Young Socialists Alliance from the Cleveland SAC of the FBI. The Government produced heavily censored versions of those files, deleting all information as to which it claimed the official information, informants, and state secrets privileges. There were tens of thousands of pages of FBI documents under subpoena. Plaintiffs chose to accept the documents as produced rather than to further delay this lawsuit by litigating the applicability of the privileges to each individual document. Plaintiffs have introduced into evidence selected FBI documents from those subpoenaed.

and trustworthiness of the report. Moreover, the Government's access to the FBI documents provided a much greater assurance of accuracy and trustworthiness of the report than could have been given by defendants here in because the Ohio election officials do not have (and could not obtain) accuss to the originals.

For the above reasons, the Court HOLDS that Judge Breitel's report is admissible under Rule 803 (8), (24), Fed. R. Evid. Additionally, the Government's formal, judicial admissions which are included in the report independently have such a strong guarantee of trustworthiness that they are admissible under Rule 803 (24), Fed. R. Evid. *Cf.*, Rules 801 (d) (2) and 804 (b) (3). Accordingly, defendants' objections to the admissibility of plaintiffs' Exhibit 110 are overruled.

Plaintiffs' Exhibit 111 is a ture copy of the transcript of the district court's hearing on the Breitel report. It is admitted to prove that the report was adopted by the district court after a hearing.

Plaintiffs' Exhibits 114 through 118, 133 and 134 are FBI documents the witness Sherri Lee Katz testified she received from the Government during the course of discovery in a lawsuit she brought against the Government for denial of federal employment. Defendants contend that the documents are not properly authenticated and that they are hearsay. There is no real question as to the genuineness of the documents. Ms. Katz testified as to how she acquired them, and defendants' counsel had an opportunity to cross-examine her. The FBI documents were properly authenticated under Rule 901 (a), (b) (1). They are not hearsay because they are memorandums and reports kept in the course of a regularly conducted governmental activity. Rule 803 (6), Fed. R. Evid. Defendants' objections to plaintiffs' Exhibits 114 through 118, 133 and 134 are overruled.

Defendants object to plaintiffs' Exhibit 119, an Order of the Minnesota Ethics Commission, on the

grounds that it is not properly authenticated, that it is irrelevant, and that it is hearsay. Exhibit 119 has been certified by the Executive Director of the Minnesota Ethical Practices Board as a true and complete copy of a publicly filed record; thus, it is properly authenticated under Rule 902 (4), Fed. R. Evid. The Order exempts the Minnesota Socialists Workers 1974 Campaign Committee from certain compelled disclosure provisions of Minnesota law. The Order contains no findings of fact. It is admitted for the limited purpose of showing the action taken by the Minnesota State Ethics Commission.

Defendants object to plaintiffs' Exhibit 121, certified copies of 3 FBI files from the Cleveland field office which were produced separately in advance of the other subpoenaed records in response to this Court's order to produce forthwith documents the FBI conceded were arguably evidence of harassment, on the grounds they are not properly authenticated, that they are irrelevant, and that they are hearsay. These documents are admissible under Rules 902 (4), 401, and 803 (6), Fed. R. Evid.; therefore, defendants' objections are overruled.

Defendants' objections to plaintiffs' Exhibits 122 through 126 are sustained on the ground that they are not relevant to the issues in this case. Clarence Kelley's statements before a subcommittee of the United States House of Representatives have no tendency to prove that there is a reasonable probability people who contribute or receive SWP campaign committee funds will be subjected to threats, harassment, or reprisals from either government officials or private individuals. See, Rule 401, Fed. R. Evid. Similarly, the statements of one Congressman (Representative Larry McDonald of Georgia) which contain only an isolated reference to the SWP in connection with a National Conference on Government Spying are not relevant to the issues in this case. Plaintiffs' Exhibits 122 through 126 are excluded from evidence.

Defendants object to plaintiffs' Exhibit 128 and 129, a certified copy of administrative proceedings under the Illinois Campaign Finance Law (a hearing examiner's factual findings and legal conclusions) and a certified copy of the Federal Election Commission's findings of fact in connection with a proceeding before it, on the grounds that they are not properly authenticated, that they are irrelevant, and that they are hearsay. Exhibit 128 has not been certified or otherwise authenticated. Exhibit 129 has been authenticated under Rule 902 (4). These findings are about allegations of governmental and private harassment of the SWP and its members which occurred outside the State of Ohio. Defendants argue that events outside Ohio are not relevant to whether contributors to Ohio SWP election campaigns will, in reasonable probability, be subjected to harassment if their names and adress are disclosed. The SWP is a national political party. There is no reason to believe that the attitudes of federal officials and private individuals in other parts of the country toward the SWP are different from those of Ohioans. The Court concludes the exhibits are relevant under Rule 401, Fed. R. Evid. They are not hearsay under Rule 803 (8) (C). Defendants' objections to plaintiffs' Exhibit 128 is sustained, but their objection to Exhibit 129 is overruled.

FINDINGS OF FACT

The Socialist Workers Party is a small, minor political party. There are three branches in Ohio: Cleveland, Toledo and Cincinnati. The Cleveland branch has about 26 members, the Toledo branch 12, and the Cincinnati branch 20. The SWP.s 1980 United States Senate candidate from Ohio received fewer than 77,000 votes. Party members carry out political activities to discuss their political views and to win people over to their ideas. The national SWP publishes both an English and a

Spanish language newspaper. In New York the SWP has a publishing house for books and pamphlets. The Ohio branches operate bookstores to sell the political literature.

The SWP regularly runs election campaigns. For example, the Toledo and Cincinnati branches have run Congressional candidates. The SWP has presidential and vice-presidential candidates. John Power, a member of the Cleveland branch, has run for the following political offices during his sixteen years with the SWP: United States Senator from Ohio; Boston, Massachusetts city councilman; Congressman from the Cambridge, Massachusetts area; mayor of Boston; and Governor of Rhode Island. SWP candidates represent definite, publicized viewpoints.

Plaintiffs offered evidence that the SWP's ideological positions are determined democratically at national conventions held every two years. In the interim policy choices are made by the National Committee (which meets 2 or 3 times a year) and its Political Committee (which meets fairly regularly). The positions adopted by the SWP are binding on its candidates.

Article 2 of the SWP's constitution provides that "the purpose of the party shall be to educate and organize the working class for the abolition of capitalism and the establishment of a workers' government to achieve socialism." The Ohio branches regularly hold educational classes for members and friends. Their members are active in trade unions, women's organizations, the black and Latino communities, and issues of concern to the SWP. Plaintiffs offered uncontroverted testimony that the SWP does not seek violent confrontation with the police and does not advocate taking arms against the government. Instead, it seeks to win over the masses to revolution through the political methods described above.

The political views of the SWP are unpopular with many Americans, and plaintiffs have offered substantial evidence of both governmental and private hostility toward and harassment of SWP members and supporters. The United States government admitted in **Socialist Workers Party, et al. v. The Attorney General of the United States**, 73 Civ. 3160 (TPG) (S.D. N.Y. February 4, 1980) (Special Master's Report)[6] that:

> From approximately 1961 to 1971, the FBI maintained a counterintelligence program (Cointelpro) against the SWP and YSA [Young Socialist Alliance, the SWP's youth organization] entitled the "SWP Disruption Program", which consisted in part of the dissemination of information by the FBI designed to impair the ability of the SWP and YSA to function.
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> . . .
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> The tactics utilized in these programs included disclosing to the press the criminal records of SWP candidates, and sending anonymous letters to SWP members, supporters, spouses, and employers.

FBI surveillance of the SWP was massive. The Government possesses about 8,000,000 documents relating to the SWP, YSA (the SWP's youth organization) and their members. **Socialist Workers Party v. Attorney General of the United States**, 458 F.Supp. at 904. Up until at least 1976 the FBI Manual of Instructions directed field offices to develop informants to obtain information about the SWP, inciuding the sources of its funds and the nature of its expenditures.[7] The FBI also obtained

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6. Plaintiffs' Exhibit 110 at p. 20.

7. *Id.* at pp. 21-22.

information about the SWP from 1960 to 1963 by direct electronic surveillance, from at least 1960 to 1966 by surreptitious entry of party facilities, and in 1973 by a mail cover.[8] The Government further admitted that:

> The FBI informants who were members of the SWP and YSA were instructed to and generally did provide detailed reports to the Special Agent with whom they were in contact. These reports (1) described the subject matter of every party meeting or activity the informant attended and (2) identified, gave physical descriptions and background data, such as employment, residence and marital status, concerning the people they came in contact with in the SWP or YSA.[9] In addition, each member informant was instructed to and generally did provide the FBI with copies of SWP and YSA documents, including mailing and membership lists, to which they had access by reason of their positions within the organization.[10]

Since 1960 the FBI has had about 300 informants who were members of the SWP and/or YSA and 1,000 non-member informants. Both the Cleveland and Cincinnati FBI field offices had one or more SWP or YSA member informants. Approximately 21 of the SWP member

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8. *Id.* at p. 22.

9. Judge Breitel found in his report that the fourteen informants whose files he reviewed reported constantly on the names, addresses, telephone numbers, places and changes of employment, unemployment, marital or cohabitational status, marital strife, health, travel plans, and personal habits of SWP and YSA members. The FBI was made aware, through the efforts of the informants, of the identity of evidently every SWP or YSA member in each branch during the period there was informant activity in that branch. Plaintiffs' Exh. 110 at p. 35.

10. *Id.* at pp. 22-23.

informants held local branch offices. Three informants even ran for elective office as SWP candidates.[11] The 18 informants whose files were disclosed to Judge Breitel received total payments of $358,648.38 for their services and expenses.[12]

The SWP Disruption Program activities admitted by the Government in **Socialist Workers Party, et al. v. The Attorney General of the United States,** *supra* also occurred in Ohio. Informants reported who attended meetings and rallies and summarized the discussions at them.[13] E.g.s, plaintiffs' Exhs. 51, 82. They also reported on other organizational activities. Plaintiffs' Exhs. 45, 47, 48 and 72. The FBI kept track of the Cleveland SWP branch checking account from at least 1964 through 1971. Plaintiffs' Exhs. 2, 4, 10, 11, 12, 15, 17, 18, 22, 26, 28, 76, 112, and 113. These reports included the names of payees on SWP checks. There are also reports of the interference with SWP activities in Ohio. Plaintiffs' Exh. 122 at p. 12.

The FBI routinely distributed copies of its reports on the SWP and its members to Army, Navy and Air Force Intelligence, the United States Secret Service, and the Immigration and Naturalization Service. The United States Civil Service Commission gathered information on the SWP, the YSA, and their supporters.

Plaintiffs have offered evidence of SWP members' employment problems. When Sherri Lee Katz was a high school student in Cleveland Heights, Ohio the FBI had an

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11. *Id.* at pp. 23-27.

12. *Id.* at p. 28.

13. In 1970 the agent-in-charge of the Cleveland field office sent a memorandum to all security squad agents and senior resident agents ordering an increase in informant coverage, particularly at Oberlin College and Kent State University. Plaintiffs' Exhs. 71 and 75.

18 page case file on her.[14] It contained details about dozens of YSA activities she participated in. Since she had no YSA leadership role, had no propensity for violence, and was 17 years old, the FBI placed her on "Reserve Index B . . . so that her case will be followed periodically." Plaintiffs' Exh. 115. Ms. Katz dropped out of the YSA after her first year in college, but she was very active in the anti-Viet Nam war movement. After graduating from college, she went to law school. In 1976, she applied for an was offered a summer clerkship on the staff of the United States Attorney for the Southern District of Ohio. She filled out a job application (including security information data for a sensitive position) stating that she was not a member of the Communist Party or of any organization which advocates the overthrow of the government by force. Later, the job offer was withdrawn without an explanation. Ms. Katz, a practicing attorney, is now a member of the SWP.

Louise Haberbush testified that she has been an SWP member for 10 years. On March 3, 1980 she and Kathie Fitzgerald, also an SWP member, were hired as forging chippers by Alcoa in Cleveland, Ohio. Despite the fact that their supervisors gave them good work evaluations, Alcoa terminated them at the end of the 30 day probationary period. They had engaged in no political activities at the plant, and there is no indication in either of their personnel files of work habits, personality traits or other factors which would make them undesirable employees. An Alcoa Labor Relations Supervisor's notes indicate that on March 27, 1980 "Huller [a shift supervisor] informs me re: Kathie [Fitzgerald]. [G]ot info from F.E. who stated that the guys told him." On March 28 the Labor Relations Supervisor called (or intended to call) Ed Merkling, a member of Alcoa's Pittsburgh national headquarters Corporate Relations staff; Larry Wilson, a manager in the Pittsburgh Industrial

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14. Their interest in her may have been enhanced by their belief that her parents were (or had been) members of the Communist Party and that 2 of her brothers were SWP members.

Relations staff; Jim Short, possibly an Alcoa Pittsburgh Corporate Security employee; and D. Towner, an Alcoa Pittsburgh Corporate Security employee. That same day his notes state "Huller informs me about Haberbush." He then apparently contacted Chief Lucas of the Newburgh Heights Police Department and Carol Ferrette, an Alcoa Public Relations Assistant. Next, he met with the general manager of Alcoa's Forging Division, a shift supervisor, the production superintendent, and a headquarters Labor Relations supervisor. Ms. Haberbush and Mrs. Fitzgerald were terminated March 31, 1980.

Charles R. Mitts and Ernest A. Abdo, members of the SWP's Cincinnati branch, testified that within the last year they were discharged from their employment at the Lodge and Shipley Company, a Cincinnati machine tool manufacturer, after they were harassed by a fellow employee (Bob Bryant) who disagreed with their political beliefs. Mr. Mitts testified that when he was transferred to the night shift Bob Bryant told him that he (Bryant) knew that he (Mitts) was a communist and that if he started spreading that crap in the plant they would find him dead in the parking lot.[15] Mitts' locker was broken open, and his clothes were slashed. Bryant threw grinder slurry at him. Mitts went to the foreman who assured him that no one would be harmed on his shift, but the threats escalated. He then talked to the head of Personnel who thought he (Mitts) was the problem. He told Mitts that he would be fired if he didn't produce hard evidence of harassment. The next day he was discharged.

Ernest A. Abdo testified that he also was threatened by Bryant. Then Bryant was beaten up by 5 or 6 people, and the story went around the plant that the socialists had done it. Abdo testified that the company then discharged him because it believed that its

15. Mitts testified that he discussed election politics with his co-workers, "I let it be known I was supporting the Socialist candidate for office."

employees wouldn't work with somebody they thought had beaten up another employee.[16]

Plaintiffs also offered evidence that in December, 1980 and January, 1981 15 SWP members of the Atlanta branch who worked at the Lockheed-Georgia Corporation's Marietta, Georgia plant were fired. In November, 1980 3 SWP members employed by Costal Dry Dock and Repair Corporation were discharged when the commanding officer of the United States Navy ship they were repairing asked that they be permanently removed from the work force assigned to the ship because they were distributing SWP literature on the ship and were soliciting membership in their party.[17] They were reinstated several days later.

Plaintiffs offered evidence of threats, harassment and violence against the SWP and its members. In October, 1978 the Chicago branch SWP offices were broken into and vandalized. Linda Morbacher, a 1980

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16. Abdo denied any connection with the beating. He said that Bryant has subsequently given a statement that he and Mitts had no connection with the beating. Mitts and Abdo were discharged, but two other SWP members remain employed at Lodge and Shipley.

17. The commanding officer stated in a letter to Costal Dry Dock that the SWP literature "could be described as potentially treasonous or mutinous if expressed by crew members themselves." He noted that "these yard workers who are Socialist Workers Party members have potential access to the Navy's latest anti-submarine warfare and electronic warfare equipments, as well as other classified materials and equipment."

Susan Wald, one of the 3 discharged SWP members, testified on deposition that before work and during breaks she held political discussions in her work area with co-workers and military personnel. She tried to interest them in reading SWP newspapers and literature.

SWP candidate for the United States Senate from Pennsylvania (she received a little over 27,000 votes), testified that in late November, 1979 a millwright in the U.S. Steel plant where she worked cut campaign literature for Andrew Pulley, a black SWP presidential candidate, into crosses, set them on fire, and threw one on the chest of a black worker. Ms. Morbacher, who had distributed the campaign literature, confronted the millwright and challenged his actions. Later, he threatened her. In November, 1980 her car, which was parked in the plant's parking lot, was completely destroyed by fire.[18]

Andree Kahl-Morgan testified that in January, 1981 she spoke at an SWP public forum in Pittsburgh about her discharge by the Lockheed-Georgia Corp. After the meeting a shot was apparently fired at the building.[19]

On July 26, 1980 the Cleveland branch of the SWP was commemorating the anniversary of the Cuban revolution with a public meeting in their new Superior Avenue headquarters at which the party's Ohio U.S. Senate candidate was speaking. Alison Kennedy, the Chairperson of the Cleveland branch, received a phone call at party headquarters on July 24 from a man who identified himself as a member of the American Nazi Party and demanded that they not hold the July 26th rally. On the afternoon of the 26th a blue Datsun with a fully uniformed Nazi seated in the front passenger seat parked outside the SWP headquarters. The car left, but

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18. A number of others' cars windows were broken, and several cars had started on fire but were not as heavily damaged as Ms. Morbach's.

19. Ms. Kahl-Morgan testified that Jose Korreal came running back into the SWP building saying, "Call the police, somebody tried to shoot me." Ms. Kahl-Morgan saw bullet holes in the glass.

returned twice later in the afternoon. The rally went ahead without incident, although police officers were present to provide protection. In November, 1980 the Cleveland branch received several harassing phone calls from Nazis. Finally, in January, 1981 the SWP's Cincinnati branch received a piece of hate mail. Elizabeth Myers, the Cincinnati branch chairperson, testified that there have also been several threatening telephone calls over the last 2 years.

CONCLUSIONS OF LAW

The Ohio Campaign Expense Reporting Law requires every campaign committee and political party to file a public report[20] of the campaign contributions it receives and the expenditures it makes. Section 3517.10, Ohio Revised Code.[21] The public disclosure statements

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20. If the candidate is standing for election to State-wide office, the filings must be made with the Ohio Secretary of State; otherwise, they must be made with the appropriate county board of elections. Section 3517.11(A), Ohio Revised Code.

21. Section 3517.10 provides in relevant part:

> (A) Every campaign committee, political committee, and political party which made or received a contribution or made an expenditure in connection with the nomination or election of any candidate at any election held in this state shall file, on a form prescribed under this section, a full, true, and itemized statement, made under penalty of election falsification, setting forth in detail the contributions and expenditures. . . .
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> . . .
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> (B) Each statement required by division (A) of this section shall contain the following information.
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> (1) The full name and address of each campaign committee, political committee, or political party, including any chairman or treasurer thereof, filing a contribution and expenditure statements;
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> (2) In the case of a campaign committee, the candidates full name and address;
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> (3) The date of the election and whether it was or will be a general, primary, or special election;

must itemize each contribution[22] and expenditure and include the full name and address of each person making a contribution[23] or receiving an expenditure.[24] Plaintiffs contend that public disclosure of the names and addresses of the persons making contributions to and

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21. *(cont.)*

(4) A statement of contributions made or received, which shall include:

(a) The month, day, and year of the contribution;

(b) The full name and address of each person, including any chairman or treasurer thereof if other than an individual, from whom contributions are received. The requirement of filing the full address does not apply to any statement filed by a state or local committee of a political party, to a finance committee of such committee or to a committee recognized by a state or local committee as its fund-raising auxiliary.

(c) A description of the contribution received, if other than money;

(d) The value in dollars and cents of the contribution;

(e) All contributions and expenditures shall be itemized separately regardless of the amount except a receipt of a contribution from a person in the sum of twenty-five dollars or less at one social or fund-raising activity. An account of the total contributions from each such social or fund-raising activity shall be listed separately, together with the expenses incurred and paid in connection with such activity. No continuing association which makes a contribution from funds which are derived solely from regular dues paid by members of the association shall be required to list the name or address of any members who paid such dues.

(5) A statement of expenditures which shall include:

(a) The month, day, and year of expenditure;

(b) The full name and address of each person to whom the expenditure was made, including any chairman or treasurer thereof if a committee, association, or group of persons;

(c) The object or purpose for which the expenditure was made;

(d) The amount of each expenditure.

All such statements shall be open to the public inspection in the office where they are filed, and shall be carefully preserved for a period of at least six years.

22. There is a cocktail party exception. A compaign committee is not required to report "receipt of a contribution from a person in the sum of twenty-five dollars or less at one social or fund raising activity." Section 3517.10 (B) (4) (e).

23. Section 3517.10 (B) (4) (b), (d).

24. Section 3517.10 (B) (5) (b), (d).

receiving expenditures from SWP candidate campaign committees would subject those persons to threats, harassment and reprisals, and that potential contributors would be deterred from contributing on account of fear of the consequences of having their names disclosed.

The United States Supreme Court has long recognized that the compelled disclosure of a person's affiliation with a group engaged in advocacy may unconstitutionally interfere with that person's freedom of association. The right to privacy in one's associations is an integral part of the right to freedom of association. **NAACP v. Alabama,** 357 U.S. 449, 462 (1958); **Talley v. California,** 362 U.S. 60. 64-65 (1960); **Gibson v. Florida Legislative Investigation Committee,** 372 U.S. 539, 544 (1963); **Pollard v. Roberts,** 283 F. Supp. 248, 258 (E.D. Ark. 1968) (three-judge Court), *affirmed per curiam,* 393 U.S. 14 (1968). Nonetheless, the United States Supreme Court upheld the Federal Election Campaign Act's compelled disclosure of the names of contributors to major party candidates' campaign committees in **Buckley v. Valeo,** 424 U.S. 1 (1976). The Supreme Court held that there are substantial governmental interests served by campaign finance disclosure laws:

> First, disclosure provides the electorate with information "as to where political campaign money comes from and how it is spent by the candidate" in order to aid the voters in evaluating those who seek ... office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

> Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return. And, as we recognized in Burroughs v. United States, 290 U.S., at 548, 54 S.Ct., at 291, Congress could reasonably conclude that full disclosure during an election campaign tends "to prevent the corrupt use of money to affect elections." In enacting these requirements it may have been mindful of Mr. Justice Brandeis' advise:
>
> > "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."
>
> Third, and not least significant, record keeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations ....

Buckley v. Valeo, 424 U.S. at 66-68 (footnotes omitted).

The individual contributor's constitutionally protected interest in associational privacy must be balanced against these governmental interests. The Supreme Court has recognized that small, unpopular political parties and their contributors are more vulnerable and have a greater need for associational anonymity:

> We are not unmindful that the damage done by disclosure to the associational interests of the minor parties and their members and to supporters of independents could be significant. These movements are less likely to have a sound financial base and thus are more vulnerable to falloffs in contributions. In some instances fears of reprisal may deter contributions to the point where the movement cannot survive. The public interest also suffers if that result comes to pass, for there is a consequent reduction in the free circulation of ideas both within and without the political arena.

Buckley v. Valeo, 424 U.S. at 71. Moreover, the government's interest in disclosure is less:

> [T]he governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election. As minor parties usually represent definite and publicized viewpoints, there may be less need to inform the voters of the interests specific candidates represent. Major parties encompass candidates of greater diversity. In many situations the label "Republican" or "Democrat" tells the voter little ... It is less likely that a candidate of, say, the Socialist Labor Party will represent interests that cannot be discerned from the party's ideological position.

Buckley v. Valeo, 424 U.S. at 70. The Supreme Court fashioned the following test for determining when compelled disclosure laws unconstitutionally limit minor party contributors' associational right:

> We recognize that unduly strict requirements of proof could impose a heavy burden, but it does not follow that a blanket exemption for minor parties is necessary. Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need only show a reasonable probability that the compelled disclosure of a party's contributor's names will subject them to threats, harassment or reprisals from either government officials or private parties. The proof may include, for example, specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats or specific manifestations of public hostility may be sufficient.
>
> ...
>
> Where it exists the type of chill and harassment identified in **NAACP v. Alabama** can be shown. We cannot assume that courts will be insensitive to similar showings when made in future cases.

Buckley v. Valeo, 424 U.S. at 74.

Two other three-judge courts have considered the constitutionality of state financial disclosure laws as applied to the SWP. In **Oregon Socialist Workers 1974 Campaign Committee v. Paulus**, 432 F.Supp. 1255, 1259-1260 (D. Ore. 1977) the Court held that evidence of harassing telephone calls and letters coupled with past FBI and police investigation did not outweigh the government's interests in financial disclosure. On the other hand, the three-judge court in **Wisconsin Socialist Workers 1976 Campaign Committee v. McCann**, 433 F.Supp. 540, 547-549 (E.D. Wisc. 1977) held that in light of the evidence of widespread surveillance and

harassment of the SWP on both a local and a national level "the minimal interest of the state in regulating this minor party must give way to the rights of those few individuals who seek to freely express their political beliefs."

The Court now turns to the evidence in this case. A temporary restraining order issued February 14, 1975 has been kept in effect by agreement of the parties. Consequently, there is no direct evidence about whether contributors would face harassment or would be deterred from making contributions if their names were filed with the Ohio Secretary of State or a local board of elections.

The evidence establishes that the Socialist Workers Party is a small political party and that its views are unpopular with many people. During the 1960s and early 1970s, the FBI conducted an "SWP Disruption Program" which the United States government has admitted was "designed to impair the ability of the SWP and YSA [the SWP's youth organization] to function." The FBI documents admitted into evidence establish both governmental and private hostility toward and harassment of SWP members and supporters. Although these documents refer to events which occurred in 1976 or earlier, this past harassment is "a chilling reminder to those who might support this unpopular cause in the future." **Wisconsin Socialist Workers 1976 Campaign Committee v. McCann**, 433 F.Supp. at 548. Plaintiffs have offered more recent evidence that private hostility and harassment toward SWP members makes it difficult for them to maintain employment. Although other factors may have played a role in particular instances of on the job harassment and employment discharge, the Court concludes that the totality of the circumstances establishes that, in Ohio, public disclosure that a person is a member of or has made a contribution to the SWP would create a reasonable probability that he or she would be subjected to threats, harassment or reprisals.

Accordingly, the Court HOLDS that the requirement of Sections 3517.10 and 3517.11, Ohio Revised Code that every campaign committee and political party file a public report of the campaign contributions it receives and the expenditures it makes is unconstitutional as to SWP candidates' campaign committees insofar as it requires them to list the full name and address of each person who makes a contribution to or receives a disbursement from the committee.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action No. C-2-75-92

SOCIALIST WORKERS '74
CAMPAIGN COMMITTEE (Ohio), et al.
Plaintiffs,

v.

TED W. BROWN, et al.,
Defendants.

Judge Kinneary
Judge Duncan
Judge Peck

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Filed August 21, 1981; 2:34 p.m.

Notice is hereby given that the Ohio Secretary of State and the members of the Ohio Elections Commission, defendants in this action, hereby appeal to the Supreme Court of the United States from the final order granting declaratory and injunctive relief to plaintiffs entered in this action on June 25, 1981.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

This court has not certified to the Ohio Attorney General, pursuant to the provisions of 28 U.S.C. 2403 (b) the fact that the constitutionality of certain sections of the Ohio Revised Code was drawn in question in this

APPENDIX C

UNITED STATES DISTRICT COURT
FOR
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Civil Action C-2-75-92

SOCIALIST WORKERS '74 CAMPAIGN COMMITTEE (Ohio), et al.

Plaintiffs,

vs.

TED W. BROWN, et al.

Defendants.

JUDGMENT

Filed June 25, 1981 3:26 p.m.

This action came on for consideration before the Court, The Honorable John W. Peck, Senior Circuit Judge, United States Court of Appeals for the Sixth Circuit, The Honorable Joseph P. Kinneary, United States District Judge and The Honorable Robert M Duncan, United States District Judge, presiding. The issues having been duly considered and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED THAT: Sections 3517.10(B) (4) (b), (5) (b) and 3517.11, Ohio Revised Code are DECLARED unconstitutional as applied to the plaintiff calss Defendants are ENJOINED from requiring members of the plaintiff class to comply with the requirement of Section 3517.10 (B) (4) (b), (5) (b) that the full name and address of each person making a contribution to or receiving an expenditure from a Socialist Workers Party candidate's campaign committee or the Socialist Workers Party be disclosed in public filings with the Secretary of State and county boards of election.

Dated at Columbus, Ohio this 25th day of June, 1981.

JOHN D. LYTER, *CLERK*

By: /s/
Deputy Clerk

action. The provisions of 28 U.S.C. 2403 (b) are inapplicable since the Ohio Secretary of State and the members of the Ohio Elections Commission are parties in this action.

WILLIAM J. BROWN
Attorney General

/s/ Thomas F. Staub
THOMAS F. STAUB
Assistant Attorney General
30 East Broad Street, 16th Fl.
Columbus, Ohio 43215
(614) 466-8600

/s/ Gary E. Brown
GARY E. BROWN
Assistant Attorney General
30 East Broad Street, 16th Fl.
Columbus, Ohio 43215
(614) 466-8600

COUNSEL FOR
DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of August, 1981, copies of this Notice of Appeal were mailed, postage prepaid, to: Thomas J. Buckley, Jr., 1700 East 13th Street, Cleveland, Ohio 44114; Gordon J. Beggs, American Civil Liberties Union of Cleveland, 1223 West 6th Street, Cleveland, Ohio 44113; Ben Sheerer, Suite 611, Rockefeller Building, Cleveland, Ohio; and Bruce Campbell, American Civil Liberties Union of Ohio, 203 East Broad Street, Columbus, Ohio 43215, Counsel for Plaintiffs.

I further certify that all parties required to be served have been served.

/s/ Gary E. Brown
GARY E. BROWN
Assistant Attorney General
30 East Broad Street, 16th Fl.
Columbus, Ohio 43215
(614) 466-8600

APPENDIX E

Section 3517.10 Ohio Revised Code

(A) Every campaign committee, political committee, and political party which made or received a contribution or made an expenditure in connection with the nomination or election of any candidate at any election held in this state shall file, on a form prescribed under this section, a full, true, and itemized statement, made under penalty of election falsification, setting forth in detail the contributions and expenditures no later than four p.m. of the following dates:

(1) The twelfth day before the election to reflect the status of contributions and expenditures at the close of business on the twentieth day before the election;

(2) The forty-fifth day after the election to reflect the contributions received and expenditures made from the close of business on the twentieth day before the election to the close of business on the seventh day before the filing of the statement;

(3) The last business day of November of every year to reflect the contributions received and expenditures made from the close of business on the last day reflected in the previously filed statement and the close of business on the last day of October.

The statement required under division (A) (1) of this section shall not be required of any campaign committee which has received contributions or made expenditures of less than one thousand dollars at the close of business on the twentieth day before the election.

If a special election is held within sixty days before a general election, the campaign committee of a successful candidate in the special election may file the statement required by division (A) (1) of this section for the general election instead of the statement required by division (A) (2) for the special election if the pre-general election statement reflects the status of contributions and expenditures for the period twenty days before the special election to twenty days before the general election.

If a person becomes a candidate less than twenty days before an election, his campaign committee is not

required to file the statement required by division (A) (1) of this section.

No statement under division (A) (3) of this section shall be required in any year in which a campaign committee, political committee, or political party is required to file a statement under division (A) (2) of this section.

No statement under division (A) (3) of this section shall be required if the campaign committee, political committee, or political party has no outstanding obligations, no balance on hand, no contributions which it has received, and no expenditures which it has made or authorized.

No statement under division (A) (3) of this section shall be required of a continuing association which has made no contributions or expenditures since the time reflected in its report under division (A) (2) of this section.

If a campaign committee or political committee has no balance on hand and no outstanding obligations and desires to terminate itself, it shall file a statement to that effect, on a form prescribed under this section and made under penalty of election falsification, with the official with whom it files a statement under division (A) of this section after complying with other reporting requirements.

(B) Each statement required by division (A) of this section shall contain the following information:

(1) The full name and address of each campaign committee, political committee, or political party, including any chairman or treasurer thereof, filing a contribution and expenditure statement;

(2) In the case of a campaign committee, the candidates full name and address;

(3) The date of the election and whether it was or will be a general, primary, or special election;

(4) A statement of contributions made or received, which shall include:

(a) The month, day, and year of the contribution;

(b) The full name and address of each person,

including any chairman or treasurer thereof if other than an individual, from whom contributions are received. The requirement of filing the full address does not apply to any statement filed by a state or local committee of a political party, to a finance committee of such committee, or to a committee recognized by a state or local committee as its fund-raising auxiliary.

(c) A description of the contribution received, if other than money;

(d) The value in dollars and cents of the contribution;

(e) All contributions and expenditures shall be itemized separately regardless of the amount except a receipt of a contribution from a person in the sum of twenty-five dollars or less at one social or fund-raising activity. An account of the total contributions from each such social or fund-raising activity shall be listed separately, together with the expenses incurred and paid in connection with such activity. No continuing association which makes a contribution from funds which are derived solely from regular dues paid by members of the association shall be required to list the name or address of any members who paid such dues.

(5) A statement of expenditures which shall include:

(a) The month, day, and year of expenditure;

(b) The full name and address of each person to whom the expenditure was made, including any chairman or treasurer thereof if a committee, association, or group of persons;

(c) The object or purpose for which the expenditure was made;

(d) The amount of each expenditure.

(C) The statement of contributions and expenditures must be signed by the person completing the form.

The person filing the statement shall, under penalty of election falsification, include with it a list of each anonymous contribution, the circumstances under which it was received, and the reason it cannot be attributed to a specific donor.

Each statement of a campaign committee of a candidate who holds public office shall contain a designation of each contributor who is an employee in any unit or department under the candidates direct supervision and control. In a space provided in the statement the person filing the statement shall affirm that each such contribution was voluntarily made.

A campaign committee which did not receive contributions or make expenditures in connection with the nomination or election of a candidate shall file a statement to that effect, on a form prescribed under this section and made under penalty of election falsification, on the date required in division (A) (2) of this section.

The statements shall specify the balance in the hands of the campaign committee, political committee, or political party and the disposition intended to be made thereof. The form for all statements to be filed under this section shall be prepared by the secretary of state, and furnished to the boards of elections in the several counties, and such boards shall supply printed copies of such form without charge.

Every campaign committee, political committee, or political party shall appoint a treasurer and designate his full name and address to the secretary of state or the county board of elections. The treasurer shall keep a strict account of all contributions, from whom received and the purpose for which they were disbursed. Every expenditure in excess of twenty-five dollars shall be vouched for by a receipted bill, stating the purpose of the expenditures, which shall be filed with the statement of expenditures. A cancelled check with a notation of the purpose of the expenditure is a receipted bill for purposes of this section. The secretary of state or the board of elections, as the case may be, shall issue a receipt for each such statement filed and preserve a copy of such receipt for a period of at least six years. All such statements shall be open to public inspection in the office where they are filed, and shall be carefully preserved for a period of at least six years.

Section 3517.11 Filing of statements of receipts and expenditures.

(A) If the statement prescribed by section 3517.10 of the Revised Code relates to the nomination or election of persons whose candidacy for nomination or election was submitted to electors throughout the entire state, the statement shall be filed with the secretary of state. If the statement relates to the nomination or election of persons whose candidacy for nomination or election was submitted only to electors within a district comprised of more than one county but less than all of the counties of the state, it shall be filed with the board of elections of that county or part of a county within the district which had a population greater than that of any other county or part of a county within the district. If the statement relates to the nomination or election of persons whose candidacy for nomination or election was submitted only to electors within a county, it shall be filed with the board of such county. If a statement relates to the nomination or election of persons who were candidates for nomination or election to the office of member of the house of representatives of congress, or election to the office of member of state board of education, it shall be filed with the secretary of state. The official with whom petitions and other documents for nomination or election to public office are filed or from whom such are received shall furnish each candidate at the time of such filing or receipt a copy of Chapter 3517. of the Revised Code and such other materials as the secretary of state may require. Each candidate receiving the materials shall acknowledge their receipt in writing. The secretary of state and each board of elections shall send a copy of each statement filed with it for state-wide office, congressman, and member of the general assembly to the Ohio elections commission.

On or before the tenth day before the dates on which statements are required to be filed by section 3517.10 of the Revised Code, every candidate subject to the provisions of sections 3517.10 and 3517.11 of the

Revised Code shall be notified by certified mail with return receipt requested of the requirements and applicable penalties of those sections. The secretary of state shall notify all candidates required to file such statements with his office, and the board of elections of every county shall notify all candidates required to file such statements with it.

(B) Any statement which is found to be incomplete by the officer to whom it is submitted shall be accepted on a conditional basis and the person who filed it shall be notified by certified mail as to the incomplete nature of the statement. Within four days of receipt of notice, in the case of a pre-election report, and seven days, in the case of a post-election report, the recipient shall file an addendum to the report providing the information necessary to complete the report.

The secretary of state or the board of elections shall examine all statements for compliance with sections 3517.08 to 3517.13 of the Revised Code. The examination shall be conducted by a person qualified therefor. The results of the examination shall be available to the public.

(C) In the event of a failure to file a statement or if a filed statement or any addendum to the statement, if an addendum is required to be filed, appears to disclose a violation of law, the official whose duty it is to examine the statement shall promptly report such facts to the Ohio elections commission, which shall investigate and, in the event of an apparent violation, report its findings to the appropriate prosecuting authority which shall institute such civil or criminal proceedings as are appropriate. No certificate of nomination or election shall be issued to a person, nor shall a person elected to an office or position enter upon the performance of the duties of such office or position until he has fully complied with this section and sections 3517.08 and 3517.10 of the Revised Code.

Joint Appendix

Office - Supreme Court, U.S.
FILED
MAR 4 1982
ALEXANDER L. STEVAS,
CLERK

CASE NO. 81–776

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1981

TED W. BROWN, *et al.*,

Appellants,

v.

SOCIALIST WORKERS '74 CAMPAIGN COMMITTEE (Ohio) *et al.*

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

JOINT APPENDIX

THOMAS D. BUCKLEY, JR.

GORDON J. BEGGS
Counsel of Record
American Civil Liberties Union of Cleveland
1223 West Sixth Street
Cleveland, Ohio 44113
(216) 781-6276

BEN SHEERER
Suite 611
614 Superior Avenue West
Cleveland, Ohio 44113

BRUCE CAMPBELL
360 South Third Street
Columbus, Ohio 43215

Attorneys for Appellees

WILLIAM J. BROWN
Attorney General of Ohio

THOMAS F. STAUB
Assistant Attorney General
Counsel of Record

GARY ELSON BROWN
Assistant Attorney General

State Office Tower
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 466-8600

Attorneys for Appellants

APPEAL DOCKETED OCTOBER 20, 1981
PROBABLE JURISDICTION NOTED DECEMBER 14, 1981

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Deposition of Susan Wald (portions omitted), United States District Court for the Southern District of Ohio Eastern Division, Case No. C-2-75-92 . JA - 6

Plaintiffs' Exhibit A to Deposition of Susan Wald, United States District Court for the Southern District of Ohio Eastern Division, Case No. C-2-75-92 ..... JA - 13

Plaintiffs' Exhibit B to Deposition of Susan Wald, United States District Court for the Southern District of Ohio Eastern Division, Case No. C-2-75-92 ..... JA - 14

Trial Transcript (portions omitted), United States District Court for the Southern District of Ohio Eastern Division, Case No. C-2-75-92 ..... JA - 17

Plaintiffs' Exhibit 54, United States District Court for the Southern District of Ohio Eastern Division, Case No. C-2-75-92..... JA - 94

Plaintiffs' Exhibit 102 (portions omitted), United States District Court for the Southern District of Ohio Eastern Division, Case No. C-2-75-92 ..... JA - 96

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Order Noting Probable Jurisdiction, Supreme Court of the United States, Case No. 81-776..... JA - 106

The following documents of the joint appendix have been reproduced in the appendix to the jurisdictional statement and are designated in the briefs by the reference (J.S. App. A - ___)

Order, dated June 25, 1981, of the United States District Court for the Southern District of Ohio Eastern Division, Case No. C-2-75-92 ..... J.S. App. A - 1

Opinion, dated June 25, 1981, of the United States District Court for the Southern District of Ohio Eastern Division, Case No. C-2-75-92 ..... J.S. App. A - 2

Judgment, dated June 25, 1981, of the United States District Court for the Southern District of Ohio Eastern Division Case No. C-2-75-92 ..... J.S. App. A - 29

Notice of Appeal to the Supreme Court of the United States, filed August 21, 1981, United States District Court for the Southern District of Ohio Eastern Division, Case No. C-2-75-92 ..... J.S. App. A - 30

RELEVANT DOCKET ENTRIES

Complaint – filed October 24, 1974 (omitted from joint appendix)

Order – dated June 25, 1981 (J.S. App. A - 1) granting declaratory and injunctive relief

Opinion – dated June 25, 1981 (J.S. App. A - 2)

Judgment – dated June 25, 1981 (J.S. App. A - 29) granting declaratory and injunctive relief

Notice of Appeal to the Supreme Court of the United States – filed August 21, 1981 (J.S. App. A - 30)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SOCIALIST WORKER'S '74 CAMPAIGN COMMITTEE (Ohio), et al.,

Plaintiffs,

-against- C-2-75-92

TED W. BROWN, et al.,

Defendants.

Deposition of MALIK MIAH taken by the Plaintiffs pursuant to Notice, at the offices of the American Civil Liberties Union, 132 West 43rd Street, New York, New York 10036, on Thursday, February 19, 1981, at 5:00 o'clock in the afternoon, before Robert X. Shaw, a Certified Shorthand Reporter and a Notary Public within and for the State of New York.

* * * *

[2]

APPEARANCES:

AMERICAN CIVIL LIBERTIES UNION
Attorneys for Plaintiffs
132 West 43rd Street
New York, New York 10036

BY: MARY HEEN, ESQ.
-and-
JACK NOVIK, ESQ.,
of Counsel

WILLIAM J. BROWN, ESQ.
Attorney General of Ohio
30 East Broad Street
Columbus, Ohio 43215

BY: THOMAS F. STAUB, ESQ.,
Assistant Attorney General.

* * * *

Q. (Ms. Heen) Do you recall being at the Chicago office on October 2nd, 1978?

A. (Mr. Miah) Yes, I do.

Q. What time did you arrive at the office?

A. Approximately nine o'clock in the morning.

Q. Would you please describe what you saw when you arrived at the office that day?

A. The front door was ajar, the room was full of papers, files, campaign literature that was burned, the wall was damaged including the book shelves were burned on the floor, and in my office the desk was burned, the wall was damaged, the files, the books were on the floor that were damaged or destroyed.

[16]

* * * *

Q. (Ms. Heen) Did you notice anything missing from the office after the break-in on October 2, 1978?

MR. STAUB: Objection.

A. (Mr. Miah) Yes, I did.

Q. What was missing?

A. Several files on top of my desk, files that - - including a list of our members in the City of Chicago, and information pertaining to contributors to our election campaign. There were other files that I knew were gone, but I don't remember the contents of those.

* * * *

[19]

EXAMINATION BY MR. STAUB:

Q. Mr. Miah, you say the Chicago office, at which you worked, was - - where was this located, again?

[20]

A. In the Loop, 407 South Dearborn.

Q. Was this office a central location for a number of Socialist Worker's Party activities?

A. No. This was our main organizing center, and we had other offices in the city.

Q. But it was a location for main organizing and directing activities?

A. Yes, it was.

Q. Was there a telephone at the office?

A. Yes, there was.

Q. Was the number listed in the phone directory?

A. I don't know if it was listed in the phone director, but it was publicized.

Q. It was publicized?

A. Yes, On different leaflets or literature. This was our public campaign office, where our phone was included on the literature.

Q. Both the telephone number and the address of the office were publicized on a number of different kinds of campaign materials, leaflets, things of that nature?

A. Yes. Yes.

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SOCIALIST WORKER'S '74 CAMPAIGN COMMITTEE (Ohio) et al.,

Plaintiffs,

-against- C-2-75-92

TED W. BROWN, et al.,

Defendants.

Deposition of SUSAN WALD taken by the Plaintiffs pursuant to Notice, at the offices of the American Civil Liberties Union, 132 West 43rd Street, New York, New York 10036, on Thursday, February 19, 1981, at 5:35 o'clock in the afternoon, before Robert X. Shaw, a Certified Shorthand Reporter and a Notary Public within and for the State of New York.

* * * *

[2]

APPEARANCES:

AMERICAN CIVIL LIBERTIES UNION
Attorneys for Plaintiffs
132 West 43rd Street
New York, New York 10036

BY: MARY HEEN, ESQ.
-and-
JACK NOVIK, ESQ.,
of Counsel

WILLIAM J. BROWN, ESQ.
Attorney General of Ohio
30 East Broad Street
Columbus, Ohio 43215

BY: THOMAS F. STAUB, ESQ.,
Assistant Attorney General

* * * *

[4]

Q. (Ms. Heen) Ms. Wald, by whom are you currently employed?

A. Coastal Dry Dock and Repair Corporation.

Q. Where is that located?

A. At the Brooklyn Navy Yard.

Q. What is your position there?

A. I am a pipefitter's helper.

Q. When were you hired by Coastal Dry Dock?

A. In June of 1980.

MR. STAUB: At this point I would like to enter a continuing objection to the testimony concerning any events which have transpired out of Ohio.

Q. Were your duties the same when you were first hired as they are now?

A. Yes.

Q. Would you briefly describe your duties?

A. As I stated, I am a pipefitter's helper, I repair and install the piping on naval vessels.

Q. Have you been employed by Coastal Dry Dock continuously until the present time?

A. Since June of 1980 until the present, yes.

* * * *

[9]

Q. (Ms. Heen) Are you a member of the Socialist Worker's Party?

A. (Ms. Wald) Yes.

Q. How long have you been a member?

A. Approximately eight years.

(Continued on next page.)

[10]

Q. Would you please describe your position in the party over the past eight years?

A. Well, over the past eight years I have been active both in local units of the Socialist Worker's Party and as a member of the national office staff.

I, from the time that I joined in 1973 until the end of 1977, I was also a member of the Young Socialist Alliance and as a party member, my major activity was as a member of the youth organization.

And during that period I participated with youth chapters on various college campuses in activities such as circulating literature to students, gathering signatures on petitions, distributing leaflets, advertising, public meetings and demonstrations and so on and the like.

From 1977 to the - - excuse me - - yes, from the beginning of 1977 until April of 1979, I worked full time for Intercontinental Press Association, the publisher of Intercontinental Press Magazine, a journal that reflects the views of the Fourth International.

And during that time, my duties were as a member of the editorial staff, mainly involved in translating documents from various journals in several languages.

[11]

From September to December of 1979, I resided abroad while serving as the English language secretary to the members of the Socialist Worker's Party who were residing in Europe and serving as the fraternal observers to the United Secretariat of the Fourth International.

Beginning in January of 1980 and continuing to the present, I have been active in local units of the party in Manhattan and Brooklyn.

I am currently a member of the Brooklyn branch and my duties have involved organizing, the circulation of the press of the Socialist Worker's Party, organizing election campaign activities, participating in coalitions aimed at protesting United States involvement in the Salvadorian civil war and the like.

Q. Did you tell anyone at work prior to your termination that you were a member of the Socialist Worker's Party?

A. Yes.

Q. Would you please describe your work related political activity, if any, prior to your termination?

A. My major political activity in the work place was holding political discussions with those around me,

[12]

including co-workers employed by the same campany and military personnel who were working in the same area that I was.

These political discussions ranged over a broad variety of topics, including the presidential elections, which were imminent at that time, the labor movement in the United

States, its history, the traditions and potential as a force for progressive social change, women's liberation, the dangers of nuclear power plants and many other subjects.

In addition, I tried to interest the co-workers and other persons in reading the press and literature circulated by the Socialist Worker's Party and in attending public discussions sponsored by the Brooklyn branch of the Socialist Worker's Party, as well as other events such as election campaign rallies and so on.

Q. When would these discussions take place?

A. During work breaks. For example, I get a ten-minute break in the morning and a 30-minute break at lunch time, and in addition, outside the gate before work, after work and so on.

* * * *

[17]

Q. (Ms. Heen) Now, Ms. Wald, you have testified that you have been long involved in the party and a person who has been a member of the Socialist Worker's Party for the last eight years.

As someone who has been a long-time Socialist Worker's Party member, do you believe that there is a reasonable probability that disclosure of Socialist Worker's Party contributors' names would subject them to threats, harassment or reprisals?

MR. STAUB: Objection to the question itself. It calls for an answer concerning an issue which is the ultimate issue of the trial.

A. I would say absolutely.

* * * *

Plaintiffs' Exhibit A to Deposition of Susan Wald, United States District Court for the Southern District of Ohio Eastern Division, Case No. C-2-75-92

(212) 858-6410

COASTAL DRY DOCK & REPAIR CORP.
BUILDING 131
BROOKLYN NAVY YARD
BROOKLYN, NEW YORK 11205

November 25, 1980.

TO: Susan Wald (Badge No. 961)

This letter shall serve as formal notice of your immediate termination of employment from Coastal Dry Dock & Repair Corp.

This action is being taken based upon letter dated 25 November from the Commanding Officer, USS AYLWIN (FF-1081). His letter speaks of the issue of your engagement in political activities which are in direct violation of Title 18, U.S. Code, Section 2387.

Very truly yours,

COASTAL DRY DOCK &
REPAIR CORP.

/s/ Vincent J. Montanti
Vincent J. Montanti,
Vice President.

cr

Plaintiffs' Exhibit B to Deposition of Susan Wald, United States District Court for the Southern District of Ohio Eastern Division, Case No. C-2-75-92

DEPARTMENT OF THE NAVY
(seal deleted) USS ALWIN (FF 1081)
(remainder of letterhead deleted)

FF1081:JRK:cah
5510
Ser:425
24 November 1980

From: Commanding Officer, USS AYLWIN (FF-1081)
To: President, Coastal Dry Dock and Repair Corporation, Building 131, Brooklyn Navy Yard, Brooklyn, New York 11205

Subj: Suspected illegal activities of self-professed members of the Socialist Workers Party in USS AYLWIN (FF-1081)

Ref: (a) Title 18, U.S. Code, Section 2387

Encl: (1) "Soldiers and Sailors and the Fight for Socialism"

1. On or about 7 October 1980, several self-professed members of the Socialist Workers Party, employed by Coastal Dry Dock and Repair Corporation, were observed by AYLWIN crewmembers to be distributing copies of enclosure (1) in a main engineering space. Additionally, they were actively soliciting membership in their organization. The thrust of the ideas professed in enclosure (1) are clearly contrary to good order and discipline in the military and could be described as potentially treasonous or mutinous if expressed by crewmembers themselves. Further, due to the nature of AYLWIN's current over-

haul, these yard workers who are Socialist Party members have potential access to the Navy's latest anti-submarine warfare and electronic warfare equipments, as well as other classified material and equipment.

2. The actions of these "socialist" workers in distributing their literature and soliciting membership in their organization while working aboard AYLWIN appear to be a violation of reference (a).

3. All possible assistance in resolving this potentially serious security problem within Coastal Dry Dock activities in general and aboard AYLWIN in particular is requested.

4. It is the policy of this command that political activity and solicitation is prohibited in AYLWIN and will be enforced. Your assistance in assuring the compliance of Coastal Dry Dock employees is requested.

5. In addition, it is requested that the below listed Coastal Dry Dock employees who were involved in previous possible violations of reference (a) be removed permanently from the work force assigned to AYLWIN:

[2]
FF1081:JRK:cah
5510

5. (CONT'D)

MARILYN VOGT	(Badge No. 957)
SUSAN WALD	(Badge No. 961)
STEVE SMITH	(Badge No. 950)
BILL HENRY	(Badge No. 934)
ROBERT DEES	(Badge No. 949)

/s/ J. R. Kott
J. R. KOTT

Copy to:
SUPSHIP BROOKLYN
COMNAVSURFLANT
COMCRUDESGRU TWO
COMDESRON FOUR
CO NAVSTA BROOKLYN
NISO NAVSTA BROOKLYN

CASE NO. C–2–75–92

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SOCIALIST WORKERS '74 CAMPAIGN COMMITTEE (Ohio), et al.,

Plaintiffs,

VS

TED W. BROWN, et al.,

Defendants.

– – –

PROCEEDINGS

BEFORE THE HONORABLE JOSEPH P. KINNEARY, UNITED STATES DISTRICT JUDGE, SITTING AT COLUMBUS, OHIO, COMMENCING AT 9:00 A.M. ON MONDAY, FEBRUARY 23, 1981.

* * * *

[10]

JOHN POWERS

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BUCKLEY:

Q. Will you state your name, please?

A. My name is John Powers.

Q. Where do you live, Mr. Powers?

A. I live in Cleveland, 2883 East 114th Street.

Q. How long have you lived there?

A. Four and a half years.

Q. Are you a member of the Socialist Workers Party?

A. Yes, I am.

Q. How long have you been a member of the Socialist Workers Party?

A. I have been a member for 16 years.

Q. Were you ever a member of the Young Socialist

[11]

Alliance?

A. Yes, I was.

Q. How long were you a member of the YSA?

A. About five years.

Q. Was that included in the 16 years?

A. Yes, and overlaps.

Q. Do you know how many members of the Socialist Workers Party there are in Cleveland?

A. There are approximately 26 members.

Q. How many YSA members?

A. Seven.

Q. Are they included in the twenty-six?

A. Most are included in the twenty-six.

Q. Some are, some not?

A. Some are, some not.

Q. Have you ever run for public office on the Socialist Workers Party ticket?

A. Several times.

Q. Tell the court the offices for which you ran?

A. I was the party candidate for US Senate in 1980 here in Ohio. In 1973 I was a candidate for city council in Boston. In 1972 I was a candidate for Congress in the Cambridge-Boston area. In 1971 I was a candidate for Mayor of Boston, and in 1970 I was a candidate for Governor of Rhode Island.

[12]

Q. Did you win any of those elections?

A. No, I did not.

Q. How many votes did you get for Senate in Ohio last year?

A. In the last election I got a little over 76,000 votes.

Q. Within the Socialist Workers Party, have you ever held any position with a title other than member?

A. I have been an executive board member, a number of different branches of the Socialist Workers Party, and I was an organizer of two branches of the Socialist Workers Party.

Q. Would you describe some of the activities which you have undertaken in fulfillment of your responsibilities in those offices?

A. Certainly. The Socialist Workers Party is a national party, and we have branches in many of the major cities throughout the country. In the State of Ohio we have branches in Cleveland, Toledo and Cincinnati, and we carry out activities to discuss our politics and try to win people over to our ideas.

Each of the branches here in the state attempts to have regular public forums where we discuss topics of the day. We distribute our newspaper which is called the *Militant.* We also distribute a newspaper called *Perspectiva Mundial,* which is

[13]

in Spanish, we distribute that.

Each of the branches in the state has bookstores where we sell literature. The party in New York has a publishing house. We publish books and pamphlets on a number of topics.

We run election campaigns. I ran for Senate in 1980. We had two candidates for Congress, one in Toledo and one in Cincinnati. We have regular educational classes for our members and for our friends, and we engage in a number of other political activities. Many, if not most of our members in the states, are also members of trade unions and are active in their unions.

* * * *

[18]

Q. (Mr. Buckley) Going back to last summer, were you employed then?

A. (Mr. Powers) I was employed then. I was a member of UAW Local 541. I was employed at Baker Material Handling Corporation in Brooklyn, Ohio, which is a suburb of Cleveland, and from April 22 until October 30 of 1980 I was on strike as a member of UAW Local 451.

Q. Did you participate, when you were on strike, in any union's strike activity?

A. Yes, many activities.

Q. In your participation were you there as a member of the union?

A. Always.

Q. Were you there in your capacity, in any capacity, as a member of the Socialist Workers Party?

A. I was a member of the Socialist Workers Party, of course, but I was there as a union member first and foremost.

Q. Would you describe for the Court any unusual incidents that you recall occurring?

[19]

THE COURT: That is in connection with this strike?

THE WITNESS: Yes, your Honor.

MR. BUCKLEY: Yes, your Honor.

THE WITNESS: There were two instances in particular that I thought were quite unusual. They occurred early in the summer. The first one, during the course of the strike, the union, who was under injunction limiting the pickets at the one gate which led into the plant, and our local elected vice president of the union was having a discussion with the Brooklyn police about how to apportion pickets one day early in the summer. I walked up to that discussion, I had my camera in my hand, I was taking pictures for a slide presentation for the local, and I wanted to get a picture of him talking to the police.

As I walked up, another policeman from the background came up and started pointing at me and said, that guy is a socialist, get him out of here. He can't come here.

THE COURT: What did he say?

THE WITNESS: That guy is a socialist, get him out of here. He can't walk up here, at which point the vice president explained that I was a member of the union, and at which point I was asked to leave.

Another incident occurred later than that, it was approximately two weeks after that, I was again at the

[20]

gate leading into the plant. I again had my camera with me. At that point I was taking pictures for an article which was to appear in the *Cleveland Citizen,* which is a labor paper in Cleveland.

I came up to the gate to get some pictures of the gate. The Brooklyn police were there again. I went to take a picture of one of the police who was on a motorcycle, and he pointed his finger at me, and he said, You are nothing but a fucking communist. If you take my picture, I am gonna take that camera, I am going to cram it up your ass, at which point he got on his motorcycle and drove off.

Q. Were you distributing any Socialist Workers Party literature at the time of these incidents?

A. No, none at all.

THE COURT: What did you do after he drove up, that motorcycle cop?

THE WITNESS: I just — —

THE COURT: Continued?

THE WITNESS: I continued, took some other pictures, and walked off.

THE COURT: In the first incident, did you leave?

THE WITNESS: I was asked to leave by the police, and I left.

* * * *

[21]

Q. (Mr. Staub) Mr. Powers, how many members are there in the Cincinnati and Toledo branches of the Socialist Workers Party?

A. (Mr. Powers) In the Toledo branch, I believe there are twelve members of the party, and in Cincinnati there are approximately twenty, twenty-one, something like that.

Q. Does this include appropriate members of the Young Socialist Alliance?

A. In some cases they are dual members, and in some cases they are not. There are additional members in the Young Socialist Alliance in Cincinnati and Toledo. There are also members of the Young Socialist Alliance here in Columbus, as well as at Oberlin College.

Q. Approximately how many members of the Young Socialist Alliance are there in Columbus?

A. There is three, sir.

Q. In connection with the various political campaigns that you have been a candidate in, has your picture ever appeared in campaign literature?

A. Quite often.

[22]

Q. Has it appeared in the newspaper?

A. Has it appeared in the newspaper? Yes, occasionally.

Q. Was that the case during your Senate campaign?

A. Yes.

Q. What kinds of activities does the Socialist Workers Party engage in to try to further its aims?

A. I tried to describe those earlier, and I will be glad to go over them here again for you. We have regular public forums where we involve a broad range of speakers. We regularly distribute our newspaper, which is called the *Militant,* and also a publication called *Perspectiva Mundial.*

We have bookstores where we sell literature. We have classes where we hold classes on socialism and we are involved in broader social movements; for example, the struggle against the American intervention in El Salvador; the question of nuclear power; we have been very much against nuclear power plants; the fight for ratification of the Equal Rights Amendment, another example of an activity we have been involved in, which we think is quite important.

Q. How is the newspaper sold, the *Militant?*

A. We sell it on the streets, we sell it on campuses, we sell it at public meetings. We also sell subscriptions of the newspaper. We are on a subscription campaign right now, as a matter of fact.

Q. Have you personally been identified as an individual

[23]

in articles appearing in the *Militant?*

A. Yes, I have.

Q. Prior to the strike which you have previously testified to, or concerning, had you ever discussed your political beliefs with individuals at your place of employment?

A. Oh, many times, certainly.

Q. Under what circumstances would you do this?

A. Well, if you have a break, you know, drinking coffee, sit around, we have discussions. Everybody talks about politics at work; at lunchtime we have discussions, informal discussions after work.

Q. Were your co-workers aware that you were a member of the Socialist Workers Party?

A. Oh, of course, yes.

* * * *

[25]

LOUISE HABERBUSH

having been called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHEERER:

Q. Will you state your name, please?

A. Louise Haberbush (spelling) H-a-b-e-r-b-u-s-h.

Q. Will you state your age, please?

A. Thirty.

Q. What is your address?

A. 11907 Continental.

Q. Where is that located?

A. It is in Cleveland.

Q. Cleveland, Ohio?

A. Right.

Q. Are you a member of the Socialist Workers Party?

A. Yes, I am.

Q. How long have you been a member?

A. Ten years.

Q. How long have you resided in the Cleveland area?

A. A year and three months.

Q. In 1980 were you employed at Alcoa Company in Cleveland, Ohio?

A. Yes, I was.

Q. Do you remember when you started your employment there?

[26]

A. I believe it was late February, but I don't know exactly the date.

Q. Are you still employed there?

A. No, I am not.

Q. How did your employment end, what happened?

A. My employment was terminated after 29 days.

Q. Do you know whether or not there is a collective bargaining agreement in effect between the workers and the management at Alcoa in Cleveland?

A. Yes, there is.

Q. Were you within the terms or under the protection of that collective bargaining agreement at the time that you were fired?

A. No, I wasn't. I was one day away from it.

Q. Were you able to claim any protection from the collective bargaining agreement at that time?

A. No, none at that time.

Q. Probationary period is 30 days?

A. Yes, 30 days.

Q. When you were discharged, were you given any reason for your discharge?

A. No, I was given no reason. They simply called me into the office and told me that they had the right to discharge me within 30 days, and they had decided to do that, and that's what they did. They didn't give me any reason.

[27]

THE COURT: This is a probationary period?

THE WITNESS: Correct.

THE COURT: Let me ask a question: Is it Miss or Mrs. Haberbush?

THE WITNESS: Miss.

THE COURT: Miss Haberbush, was it your understanding when you entered into the employ of Alcoa in Cleveland, that your permanent employment would be subject to a decision of management after the 30-day probationary period?

THE WITNESS: Right, that was my understanding.

* * * *

[35]

Q. (Mr. Sheerer) Do these records show that Louise Haberbush and Kathie Fitzgerald were terminated at Alcoa?

A. (Mr. Catanzarite) Yes, they do.

Q. On what date were they terminated?

A. On March 31, 1980.

Q. At the time they were terminated, were they within the probationary period at Alcoa?

A. Yes, they were.

Q. Not within the collective bargaining agreement?

A. That's correct.

Q. What is the probationary period there?

A. What is it?

Q. I mean how many days.

A. At that time it was 30 days.

Q. Do these records show any reason whatsoever for the discharge of either Kathie Fitzgerald or Louise Haberbush?

A. They merely state, Dismissed, probationary employee. The company is not required contractually to give a reason

[36]

for dismissal during the probationary or, as we refer to it, no contest period.

THE COURT: The question is: Was a reason given?

THE WITNESS: No, no reason was given other than dismissed, probationary employee.

Q. Sir, do the records reveal to you — — You are in labor relations?

A. That's correct.

Q. — — Do the records show any reason for discharge?

A. No, they did not.

Q. There is no discipline, no absentee problem?

A. No.

Q. Foremen's reports were all good?

A. Yes. On Miss Fitzgerald they were all good. On Miss Haberbush there were references made, I believe, to coming back with a sandwich, but nothing that you could call earth shattering or, you know, disturbing.

Q. In Miss Haberbush's case, the foreman recommended retention, did he not?

A. Yes, he did.

* * * *

[38]

Q. Could you tell the Court who those persons are?

A. The first one, Ed Merkling, is a member of the Corporate Labor Relations staff in Pittsburgh, which is our headquarters. Larry Wilson is a manager on the corporate staff of the Industrial Relations Department.

Q. Does he work in Pittsburgh or in Cleveland?

A. He works in Pittsburgh also. Mr. Short, I am not sure what he does. I think it may be security, but I am not sure, so I have to say I don't know.

[39]

Q. Does he work in Cleveland?

A. He works in Pittsburgh. These four gentlemen all work in Pittsburgh. Mr. Towner is with Corporate Security.

Q. In Pittsburgh?

A. Yes, he is.

Q. Underneath that does it show another entry by Mr. Wilson?

A. Yes, it does.

Q. What is that entry, sir?

A. It says, Huller informed me about Haberbush.

Q. Again, sir, is any indication given as to what the information is?

A. No, there is not.

Q. On further notes, on March 28, there is a reference to a Chief Lucas. Can you tell us who that is, sir?

A. Yes, he is the Chief of Police in Newburgh Heights.

* * * *

[40]

Q. Then later on, the same entry, it says that there was a meeting of various persons.

A. Yes.

Q. Could you tell us who the meeting was with?

A. CRG is Clyde Gillespie, is the general manager of the Forging Division for Alcoa. Jim Ryan is a production superintendent. Don Huller is a shift supervisor, general supervisor for second shift, and Ed Wilson, as I stated earlier, is a labor relations supervisor at that time.

Q. All of these notes run chronologically and consecutively, do they not, sir?

A. Yes, they do.

Q. They all make reference to Kathie Fitzgerald and Louise Haberbush?

A. Yes, they do.

* * * *

[45]

Q. (Mr. Buckley) What brought you to Cleveland in July?

A. (Mr. Schwing) I came to hear John Powers speak.

Q. Who is John Powers?

A. That man there, senatorial candidate from Ohio.

Q. Where was the speech scheduled to be given?

A. At the SWP Headquarters on Superior.

Q. Do you recall what time his speech was scheduled to begin?

A. Sometime in the evening, around eight o'clock.

Q. What time did you get to Cleveland yourself?

A. About one o'clock.

Q. When you got to Cleveland, where did you go?

A. Directly to the headquarters.

Q. That afternoon at the headquarters, when looking out the window, did you see anything unusual?

A. I certainly did.

Q. Would you explain to the Court what you saw?

A. My roommate and I were fixing the table, and he went over to the window, to get a breath of fresh air, and he looked out the window and he called me over. He said, There are Nazis out there.

THE COURT: There are what?

THE WITNESS: There are Nazis out there. I ran over to the window and looked down, and I saw a blue Datsun with a Nazi on the passenger side, fully dressed in

[46]

uniform, Nazi – –

THE COURT: Let me understand. You saw a blue Datsun automobile?

THE WITNESS: Right.

Q. Mr. Schwing, was there anybody in the blue Datsun?

A. Yes, there was.

Q. Was the blue Datsun parked or moving?

A. It was parked.

Q. What floor is the SWP office on?

A. Second floor.

Q. Where was the Datsun parked?

A. Directly in front of the headquarters.

Q. Compared to the window you were looking out — —

A. Right. I could look directly down at the car.

Q. Did you see the person on the passenger's side of the car?

A. Yes, I did.

THE COURT: What do you mean, the passenger's side, the driver's side?

MR. BUCKLEY: I meant not the driver's side.

THE COURT: You mean the right side of the automobile as you face it, is that correct?

THE WITNESS: That is correct.

MR. BUCKLEY: The left side as you face it, your Honor.

[47]

THE COURT: Yes, of course.

Q. Did you see what that person was wearing?

A. He was in full dress Nazi uniform.

Q. Would you explain more particularly what you saw that person wearing?

A. He was sitting, and I only saw the top half of his body; he had his arm out, and he specifically wanted us to see his Nazi regalia, his Nazi arm band.

Q. Would you describe the arm band?

A. It was a black swastika with, you know, the white background and the red arm band on top of a brown uniform.

Q. After you saw the passenger in the car, what did you do next?

A. I left from the window. I was afraid that – – There had been threats earlier that there might be some violence, and Albert and I, my roommate – –

Q. Just tell what you did next.

A. Okay. I went to Alison, I think, and told them – –

THE COURT: You what?

THE WITNESS: I went to see Alison, or several people at the SWP headquarters, and let them know the Nazis were outside. We closed the doors and stayed away from the windows.

Q. About what time was that in the afternoon?

A. That was around two o'clock, I would say, about

[48]

an hour after I arrived.

Q. Did you see that blue Datsun again?

A. Yes, twice.

Q. The second time you saw it, where was it?

A. Same place, parked in front of the SWP Headquarters on Superior.

Q. About how long after the first sighting did you see it the second time?

A. I am not exactly sure. It was later in the afternoon, after the police had arrived.

Q. The second time you saw the blue Datsun, did you see any of the occupants of the car that time?

A. Yes, I did.

Q. Were they wearing, as you recall it, regalia?

A. No, this time, the second time I saw them in civilian clothes, they had white T-shirts on, they had taken off their uniforms, it was obvious.

Q. Had you seen the face of the passenger with the regalia the first time you saw them?

A. Yes.

Q. Did you see the same face the second time you saw the Datsun?

A. Yes, I did.

Q. What did you do when you — — Describe the circumstances of your second sighting of the Datsun with the same passenger?

[49]

THE COURT: Were you outside, looking out the window as you were the first time, this time, two o'clock?

THE WITNESS: No, the second time when I saw their second appearance, I was in charge of keeping an eye outside, front, near the door, and when they — —

THE COURT: Were you on the inside of the building?

THE WITNESS: Yes, I was in the inside door.

Q. On the ground floor?

A. Ground floor, yes, and the second time I saw them I was with three other people. We walked over to the police car to let them know they had just pulled up.

* * * *

[52]

Q. (Mr. Staub) Had the events that were taking place at the Socialist Workers Party Headquarters on that day been publicized in any manner?

A. (Mr. Schwing) Yes.

Q. How was this done?

A. I understand that the Nazis had threatened the SWP earlier the day before, and there were several attempts to get people from different parts of Ohio to come up for security work in case they showed up. There was media events to let the people there know that the SWP was threatened by Nazis, and to achieve some kind of solidarity work with different organizations around the issue bounds.

Q. Why, again, had you gone to the Socialist Workers Party Headquarters on that day?

[53]

A. Personally, I am sympathetic to socialism. Second, I voted for, or I know John Powers.

THE COURT: He wanted to hear Mr. Powers speak that night. That's what he said on direct examination, didn't you?

Q. Had Mr. Powers' speech been previously advertised to the public?

A. Yes.

Q. In what manner was that done?

A. In what manner? I received a leaflet from the Cleveland people regarding the meeting.

Q. Do you know if the meeting had been mentioned in the *Militant?*

A. I am not sure. It may have been.

Q. Was the location of the Socialist Workers Party headquarters mentioned on the leaflet that you received?

A. Oh, yes.

Q. Do you know whether these leaflets were distributed in any other manner?

A. Other manner? I don't understand.

Q. Were they distributed to any other persons, to the best of your knowledge?

A. I am sure they were. It was a public meeting and all sympathizers were invited, and I was one of the sympathizers.

* * * *

[60]

Q. (Mr. Buckley) What kind of work did you do there?

A. (Ms. Kahl-Morgan) I was a structural assembler. I made the floors of the C141 cargo planes.

Q. Before being employed, did you have to take a test?

[61]

A. Yes.

Q. What kind of a test?

A. It was an 8-hour proficiency test in structural assembler's work.

Q. Was the work that you did hard?

A. Yes.

Q. Were you able to perform it?

A. Yes.

* * * *

[62]

Q. When did your employment come to an end?

A. December 12, 1980.

Q. Was that inside or was that within that probationary period, or after the probationary period?

A. It was after I had finished probation.

* * * *

[63]

Q. Did you ask the department manager why you were fired?

A. Yes.

Q. What reason did he give you?

A. He said falsification of application.

Q. Had you falsified your job application?

A. Yes.

Q. How had you falsified your job application?

A. I had exaggerated my experience.

Q. What experience?

A. The structural assembler's experience.

* * * *

[65]

THE COURT: Were those other people that were fired along with you?

THE WITNESS: Yes, there have been fifteen altogether.

THE COURT: Were you all SWP members?

THE WITNESS: Yes.

Q. How many SWP members are there in Atlanta?

A. About twenty-seven.

Q. Have you been in Pittsburgh recently?

A. Yes, I was there the last week or so of January.

Q. What brought you to Pittsburgh?

A. I am on a speaking tour as part of this Lockheed case, and I was giving a public forum there on a Friday or Saturday night.

Q. Had that forum, to your knowledge, been publicized?

A. Yes, quite a bit.

Q. Was it open to the public?

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A. Yes, it was a public meeting.

Q. Where was it held in Pittsburgh?

A. I don't remember the name of the street, but it is in an open building, the first floor of a store front in Pittsburgh, in South Pittsburgh, I think.

Q. Is it an SWP office?

A. Yes, it was. It says SWP in big letters.

Q. Were there any other speakers on the program with you?

A. Not except for the chairperson.

Q. What time was it over?

A. Was it open or over?

Q. Over.

A. About 9:30 or 10:00.

Q. When it was over, when you were on your way out, did you notice anything unusual occur?

A. Yes. Right before I left, Jose Korreal, who had been at the forum and had left, came running back in, and he was very excited. He said, Call the police. Sombody tried to shoot me. We went outside and looked, and there were bullet holes in the windows.

Q. Would you describe the holes that you saw?

A. There was one on each side of the door, in the glass, and they were about an inch in diameter, the shattered part,

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and the hole in the center was about a quarter of an inch.

Q. Were they round?

A. Yes.

Q. If there was a hole in the center a quarter of an inch, and it was an inch or so altogether, what was in between the little hole in the middle and the outer perimter?

A. What do you mean? There was nothing in the hole. It was just a hole in the glass, two holes.

Q. An inch across?

A. The shattered part, yes.

Q. What did you do after you observed these holes?

A. We called the police and they came and investigated.

Q. Anything else unusual along those lines happen that night?

A. Well, not that I can think of. It is unusual enough.

* * * *

[70]

CHARLES R. MITTS

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHEERER:

Q. Will you state your name and spell it for the Court, please?

A. My name is Charles R. Mitts (spelling) M-i-t-t-s.

Q. How old are you, sir?

A. Thirty-one.

Q. Where do you live?

A. Cincinnati, Ohio.

Q. How long have you lived there in Cincinnati?

A. Just about all my life.

Q. Are you a member of the Socialist Workers Party, sir?

A. Yes, I am.

Q. For how long have you been a member?

A. Since the branch was chartered there in, I think, '75.

Q. Are you currently employed, sir.

A. Part-time, yes.

Q. Where were you last full-time employed?

A. At Lodge and Shipley Company.

Q. What type of company is that, sir.

[71]

A. That's a machine tool manufacturer.

Q. Where is it located?

A. On Colerain Avenue, Cincinnati.

Q. Cincinnati, Ohio?

A. Yes.

Q. While you were employed there, did you have any treatment from other employees that would be out of the ordinary?

A. Yes, I did.

Q. Would you tell the Court what that was?

A. Well, I was transferred to the night shift, and upon beginning work on the night shift, I was immediately threatened by one employee in particular, he had friends who – –

Q. Keep your voice up.

A. He had friends who helped in his harassment and intimidation of me.

Q. What was the name of the person that threatened you?

A. Bob Bryant.

Q. How did he threaten you, sir?

A. As soon as I walked onto the night shift, he said that he knew I was a communist and that if I started spreading communist crap in the plant, they would find me dead in the parking lot.

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THE COURT: He said that to you?

THE WITNESS: Yes, he did.

Q. Did you have any other occasions with Mr. Bryant?

A. That week, yes, just about every time that I turned around, he was there.

Q. What would happen?

A. He threatened me, he would stare at me, he would throw things at me, and I don't know if he did it, but I had other things occur, you know, when I couldn't be around to see what was happening. My locker was broken into and my clothes were all slashed.

Q. That was when you went on the night shift?

A. Yes.

Q. You said 'things were thrown at me'?

A. Yes, I had grinder slurry off of the grinding machine he operated.

Q. What is grinder slurry?

A. It is just the waste material that is left, I guess a combination of coolant and grinder wheel and metal that, you know, packs real tightly, could be made up into a ball, and he would throw it at me.

Q. Mr. Bryant threw that at you?

A. Yes.

Q. Did he make any other verbal threats to you during that time?

[73]

A. He was constantly telling me that, you know, he was going to take care of me, kill me.

THE COURT: What did you do?

THE WITNESS: Nothing.

THE COURT: Did you report him to your superintendent, did you report him to the police, or what did you do?

A. When he told me that he was going to kill me if I spread communist crap, as he put it, I said, Well, I sent to see my union steward, and he informed me he was the union steward. At that point I informed my foreman about the threats.

THE COURT: What did he do?

THE WITNESS: He told me that no one would be harmed on his shift, you know, he would take care of me.

Q. Did the threats persist?

A. Yes, threats escalated. I continued to report the problems to the management.

Q. You reported that your locker was broken into?

A. Yes, on each occasion that I was threatened or something was thrown at me, or a note was left at my work area, I would report that to my supervisor.

Q. What was the final response of management to this problem?

A. Well, can I step back just a second to that?

[74]

Q. Yes.

A. Eventually, I was hit with some of this grinder slurry, and at that point, since management hadn't been able to deal with the problem, I demanded to file a grievance against the company for failure to enforce their rules, you know, which prohibit employees behaving that way. They also say in their contract that they will provide a safe place to work, so I initiated a grievance proceeding.

I was in the process of filing this grievance, I was talking to the head of personnel, and he told me he thought I was the problem, and that unless I produced hard evidence of harassment, that they would terminate me.

Q. Were you terminated, sir?

A. Yes, I was.

THE COURT: What did they say? What did the head of personnel tell you?

THE WITNESS: After I told the company I was going to file a grievance, I was very upset, the next day, when I cooled off a little bit, I called the company up. I called the head of personnel and said that I would like to talk to him short of filing a grievance about the problems I was having. At that meeting he told me he thought I was the problem, and unless I could produce hard evidence of harassment, the company was going to terminate my employment.

Q. Were you terminated during that meeting, sir?

[75]

A. No, he rescheduled a meeting, that was on a Friday, for the next Monday, and Monday I was terminated.

Q. You were fired on Monday?

A. Yes.

Q. Have you filed a grievance?

A. Yes.

Q. For your discharge?

A. Yes.

Q. Is that grievance being processed?

A. It is scheduled for arbitration March 19.

* * * *

[77]

CROSS–EXAMINATION

BY MR. STAUB:

Q. Mr. Mitts, have you been active in Socialist Workers Party activities in Cincinnati?

A. Yes.

Q. What kind of things have you participated in in association with SWP?

A. Well, sales of the press, public meetings.

THE COURT: What did you say?

THE WITNESS: Sales of the newspaper, the *Militant, Perspectiva Mundial.* Sometimes I staff the bookstore, you know, during open hours. I help build meetings, you know, whenever, leaflets, or whatever, participate on just all the activities of the local.

Q. Prior to the time you were terminated, had you ever discussed your political ideas with co-workers?

A. Yes, as they came up, it was an election, it was during the election, so when my co-workers were discussing the election and different candidates, I had occasion to now and then discuss who I thought would be a good person to vote for.

[78]

Q. In the course of these conversations, did you mention your affiliation with the Socialist Workers Party?

A. Well, you know, I let it be known that I was supporting the Socialist candidate for office.

* * * *

ERNEST ABDO

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHEERER:

Q. Will you state your name and spell it for the Court, please?

[79]

A. Ernest Abdo (spelling) A-b-d-o.

Q. How old are you, sir?

A. Twenty-two.

Q. Where do you live?

A. Cincinnati.

Q. How long have you lived in the Cincinnati area?

A. About a year and a half.

Q. Are you, sir, a member of the Socialist Workers Party?

A. Yes, I am.

Q. For how long have you been a member?

A. About five years.

Q. Are you now employed?

A. Yes.

Q. Where are you employed at the present time?

A. A company called SETCO.

THE COURT: Speak up so everybody in the courtroom can hear you plainly. What is the name of the company?

THE WITNESS: SETCO, Standard Electrical Tooling Company, I believe, is the full name of it.

Q. Where were you employed before that, sir?

A. At Lodge and Shipley.

Q. In Cincinnati?

A. Yes.

[80]

Q. The same place Mr. Mitts was employed?

A. Yes.

Q. What happened to your employment at Lodge and Shipley?

A. I was fired for disruption of production. That's the company term.

THE COURT: You were fired for what?

THE WITNESS: The company said disruption of production.

Q. Sir, did anything happen to you, while you were working there, from other employees?

A. During the week that Mr. Mitts went on night shift, I was present that week, Monday, and then I was absent Tuesday and Wednesday because of the flu. During that time I became aware of the problems that Mr. Mitts was having, the harassment that he was facing from a few of the other employees, none of which I had received, but on Thursday night I returned to work and I was twice threatened during the course of the night by the same Mr. Bryant.

Q. How did he threaten you?

A. Verbally. There were no other witnesses except Mr. Mitts in one case, and one instance Mr. Bryant followed me into the bathroom and said seomething to the effect that he didn't like people smiling at him, and that I had been warned. I had smiled at Mr. Bryant because when Mr. Mitts

[81]

came over into my department, the Lathe Department, to tell me about the problems that he was having that night, Mr. Bryant followed him over, and from a distance of about 30 feet stared at us. When I turned over in his direction, I smiled at Mr. Bryant.

Q. Do you remember anything he may have said to you in terms of a threat?

A. Mr. Mitts later that night called up over the intercom, or the phone system, the union president and some other people, in order to file a grievance, and I walked over into that department where Mr. Mitts was in order to get in on the grievance, because I had also been threatened by Mr. Bryant, and I wanted to file a grievance against the company for refusing to enforce their own rules as stated in their handbook. After being told by the foreman that it would be better if I would go back to my department, I walked past Mr. Bryant's machine, at which point he started singing "Your Day Will Come."

Q. You say that you were terminated, is that correct?

A. Right, the following Monday I was terminated.

Q. You say the given reason was disruption of production?

A. Right.

Q. When was that production alleged to have been disrupted?

[82]

A. Friday, at some point, I received a call from — —

Q. Do you know what day it was?

A. Friday morning.

Q. Were you at work at that time?

A. Well, the beginning of the problem was supposedly Firday morning, and I was going to go in to work Friday. I worked second shift, and I received a call sometime Friday morning from Mr. Mitts, telling me that during the course of the night Mr. Bryant, on his way home, had supposedly been beaten up by five or six people on his way home from work, and that the story was going around the plant that the Socialists had beaten Mr. Bryant up because he had been harassing us.

THE COURT: Was Bryant actually beaten up?

THE WITNESS: I don't know. Certainly, your Honor, not by the Socialists. Mr. Mitts retained a lawyer who got a statement from Mr. Bryant saying that he knows that the people involved were not Mr. Mitts or his friends, meaning myself and other socialists employed at the plant, and that he did not

know the identity of the people involved in the attack on him.

Q. Did you go to work that day?

A. No, I did not.

Q. Is that the day that the alleged disruption of production occurred?

[83]

A. Right.

THE COURT: You disrupted production because you didn't show up for work one day, is that the company's reason?

THE WITNESS: The company's reasoning was that the employees would not work with somebody they thought had beaten up another employee.

Q. He has now said that you were not one of the people that had beaten him up, is that correct?

A. That's correct.

MR. SHEERER: Nothing further, your Honor.

THE COURT: Mr. Staub?

— — —

CROSS–EXAMINATION

BY MR. STAUB:

Q. In addition to Mr. Mitts and yourself, were other Socialist Workers Party members employed at the plant?

A. Yes, there were.

Q. Are those individuals still employed there?

A. Two of them are.

* * * *

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ELIZABETH MYERS

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHEERER:

Q. Will you state your name and spell it for the Court, please?

A. Elizabeth Myers (spelling) M-y-e-r-s.

Q. How old are you, please?

A. Thirty-seven.

Q. Where do you reside?

A. Cincinnati.

Q. How long have you lived there?

A. Going on three years.

Q. Are you a member of the SWP, the Socialist Workers Party?

A. Yes, I am.

Q. How long have you been a member?

A. Seventeen years.

Q. Do you hold any positions with the Socialist Workers Party in Cincinnati?

A. I have been the organizer, which is the chairwoman of the Cincinnati branch for two years.

Q. In order to carry out those duties, where do you work?

[85]

A. I work out of the Militant Bookstore in the headquarters of the Socialist Workers Party and the Young Socialist Alliance.

THE COURT: Where is that located in Cincinnati?

THE WITNESS: Oh Gilbert Avenue in Cincinnati.

THE COURT: Gilbert near where?

THE WITNESS: McMillan.

THE COURT: Peeble's Corner?

THE WITNESS: That's exactly it.

Q. Do you have an office there?

A. Yes.

Q. Which is open to the public?

A. Yes.

Q. Do you sell the Socialist Workers Party literature and newspaper there?

A. Yes.

Q. Hold meetings?

A. Yes.

MR. SHEERER: Your Honor, may I show the witness an exhibit?

THE COURT: You may.

Q. Asking you to look at what's been marked for purposes of identification as Plaintiff's Exhibit 120, I will ask if you can tell the Court what that is, please?

[86]

A. Well, it is a letter we received, I believe at the beginning of this year, and it's a letter about communists, anticommunists, it is a piece of hate mail, threatening piece of hate mail.

Q. Do you know whether you have the envelope in which that was received?

A. Yes, I do.

Q. Is that part of the exhibit also?

A. Yes.

Q. Is this mail signed – –

A. Yes.

Q. – – with a person's name and address?

A. Well, it has no address, and it is signed by three figures, which I do not think was the person who signed it, three different names.

Q. It is an anonymous letter then?

A. Yes.

Q. That was received by the Socialist Workers Party?

A. Yes.

Q. In your office?

A. Yes.

Q. Where was that posted?

A. Chicago, Illinois.

Q. I take it you are in the phone book in Cincinnati?

A. Yes.

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Q. Listed under Socialist Workers Party?

A. Yes.

Q. Have you had occasion to receive threats over the telephone when you have worked at the headquarters at the Socialist Workers Party?

A. Yes.

Q. Threats of violence?

A. Yes.

Q. Directed at members of the Socialist Workers Party?

A. Yes.

MR. SHEERER: Nothing further from this witness, your Honor.

THE COURT: Have these threats ever been directed to you personally by name?

THE WITNESS: Not by name.

THE COURT: Mr. Staub?

– – –

CROSS–EXAMINATION

BY MR. STAUB:

Q. On how many occasions have these telephone threats been personally received by you?

A. Several times.

Q. That's over what period of time?

A. Well, myself, I would say the past two years.

MR. STAUB: I have no further questions.

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THE COURT: What, if anything, have they ever done to carry out their threats?

THE WITNESS: Luckily, nothing.

THE COURT: Nothing?

THE WITNESS: Not to the headquarters itself, no.

(Witness excused.)

– – –

THABO NTWENG

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BUCKLEY:

Q. Would you state and spell your name, please?

A. Thabo (spelling) T-h-a-b-o, last name (spelling) N-t-w-e-n-g.

Q. Where do you live, Mr. Ntweng?

A. 12713 Craven Avenue, Cleveland, Ohio.

Q. Are you a member of the Socialist Workers Party?

A. Yes, I am.

Q. Do you have any title other than member within the SWP; do you hold any office or title other than member?

A. I am the Cleveland Branch Chairperson. I am also a member of the National Committee of the Socialist Workers Party.

[89]

Q. Where do you perform your duties as the chairperson of the Cleveland Branch?

A. At our bookstore and headquarters on 2230 Superior Avenue in Cleveland.

Q. Is there a telephone there?

A. 579-9369.

Q. Is that number listed in the directory?

A. Under the heading Socialist Workers Party.

Q. How long have you been the organizer, the chairperson in Cleveland?

A. Since August.

Q. 1980?

A. Yes.

Q. Would you describe to the Court any unusual telephone calls which you have received at the SWP office?

A. I received one particular phone call immediately after the campaign elections when the SWP ran Andrew Pulley for president. I received the call where the caller asked me for Andrew pulley's telephone number and home address, at which time I inquired why the person wanted it. It was explained to me that they were running a security check on Andrew Pulley, which I found very funny because Andrew Pulley did not live or reside in the Cleveland area, only his family does, at which time I asked the caller again why did they want Andrew Pulley's number and address.

[90]

They informed me again that they were running a security check on Andrew Pulley,

at which time I requested they give me their telephone number and I would return their call, which they did. I took the number and I, in about two or three minutes, returned the call to the number that was given to me, at which time I received a recording from the American Nazi Party, a statement that referred to blacks, Jews, killing all blacks, killing all Jews, etc. It was a hate telephone message.

Q. Were there any other similar calls?

A. Right. I received another call on a security check for Andrew Pulley, the same response from the caller, the same telephone number. I also received other phone calls that just inquired where was the Socialist Workers Party located, which is public information basically. I asked why, did the person want to buy books, or did they want our newspaper, the *Militant,* or the Young Socialists, and they informed me, no, we just want your address.

I asked why again, and then the caller just said, Hitler, Heil Hitler, on this phone call. I received a similar phone call approximately another week after that one, where the caller inquired of the address, and this time just basically said that Eichmann was correct, or Eichmann was right.

THE COURT: He said who was right?

THE WITNESS: Eichmann, Adolph Eichmann in

[91]

those two phone calls.

Q. Any other such calls?

A. Not that I have taken personally, no.

MR. BUCKLEY: I have no more questions.

THE COURT: Mr. Staub, do you wish to cross-examine this witness?

MR. STAUB: I have no questions, your Honor.

(Witness excused.)

* * * *

[93]

Q. (Mr. Buckley) When you were in high school, were you a member of the YSA?

A. (Ms. Katz) Yes, I was.

THE COURT: What is the YSA?

MR. BUCKLEY: Young Socialist Alliance, your Honor.

THE WITNESS: Yes, I was a member of that organization.

Q. Did you attend Young Socialist Alliance meetings?

A. Yes, I did. I was very active in the organization.

Q. Did you participate in any other activities sponsored or conducted by the YSA?

A. Well, yes, I attended regular meetings which occurred on a weekly basis and educational events, forums, things of that nature, public meetings.

Q. When you were in college, were you a member of either the YSA or the SWP?

[94]

A. I think I was a member of the YSA for the first year I was in college, the whole first year. I believe I dropped out sometime after my first year.

Q. You did not then join the SWP?

A. Not immediately, no.

Q. Are you a member of the Socialist Workers Party now?

A. Yes, I am.

Q. When you were in college or high school, do you remember the names of any of the organizations which sponsored political activities that you participated in besides the YSA?

A. Yes, I do. I was very active in the movement against the Vietnam War, and there were several organizations that sponsored activities against the war, such as the Student Mobilization Committee, the Cleveland Area Peace Action Council and the National Peace Action Council.

Q. When you were in law school, did you apply for a summer job the summer between your second and third years?

A. Yes, I did.

Q. What summer was that?

A. That was the summer of 1976.

Q. Where did you apply?

A. I applied for a summer clerkship at the United States Attorney's Office, the District Attorney's Office for the Southern District of Ohio.

Q. After you asked them for a job, what happened?

[95]

A. Well, shortly after I was interviewed there by the District Attorney, who at that time was Henry Winkler, and his first assistant, who was Anthony Nyktas – –

THE COURT: Just a minute. Henry Winkler, he was not the United States Attorney, was he?

THE WITNESS: He was the District Attorney for that area, if I recall correctly.

THE COURT: You mean the Federal – –

THE WITNESS: Yes, he now is a Municipal Court judge in Cincinnati.

THE COURT: I know, but was this in Cincinnati?

THE WITNESS: Yes, sir.

THE COURT: This was in what year?

THE WITNESS: 1976.

THE COURT: He was an assistant United States Attorney, wasn't he?

THE WITNESS: My understanding was that he was the District Attorney for that area.

THE COURT: I can tell you that Winkler was never the United States Attorney. Was he an Assistant United States Attorney?

THE WITNESS: It is possible that that was his title. He was the head person in that office in the Southern District located in Cincinnati. There may have been

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someone who was superior to him in one of the other – –

THE COURT: Do you know who the United States Attorney was at that time?

THE WITNESS: I didn't have any direct communication with him, no.

THE COURT: So, you don't know?

THE WITNESS: No, I don't recall. I was under the impression that it was Mr. Winkler.

THE COURT: Go ahead.

MR. BUCKLEY: May I show the witness some exhibits, your Honor?

THE WITNESS: Excuse me. This refreshes my recollection. You are correct, your Honor, Mr. Milligan was the United States Attorney at that time. I know that his name is on this letter that was sent to me. He did not interview me directly for the position though. Mr. Winkler and Mr. Nyktas did.

Q. That letter is marked Plaintiff's Exhibit 132?

A. Yes, sir.

Q. Do you recognize it?

A. Yes, I do. Shortly after I was interviewed for the position by Mr. Nyktas and Mr. Winkler, I was offered the job, and this letter was the job offer. It was sent to me at my home.

Q. After receiving this letter, what happened next?

[97]

A. Well, as soon as I got the letter, I was overjoyed at having been offered the position, because I wanted it very much, and in the letter Mr. Nyktas had indicated that I should contact him, which I did the day I got the letter, and he said to come in to the office and fill out some forms which were necessary to complete the processing pretty much, and I did that the following day.

Q. Would you look at what is marked Plaintiff's Exhibit 114?

A. Yes.

Q. Look at the third, fourth, fifth and sixth pages.

THE COURT: Is this the job application?

THE WITNESS: Yes, sir.

MR. BUCKLEY: Yes, your Honor.

THE WITNESS: Well, it is not exactly a job application, maybe we should clarify that.

Q. When did you fill out this form?

A. I filled it out the day after I was offered the job, which was May 6, 1976, I believe. Let me just check the date. No, it was May 7 that I filled the application out.

Q. What is the date on the letter?

A. The letter is dated May 5, so I filled it out two days after I got the letter, or perhaps the next day. I am not sure. The letter is dated May 5, and I think I probably got it the next day.

[98]

Q. Is that your signature on the back of the last page?

A. Yes, it is.

Q. How many of these forms did you fill out and sign?

THE COURT: Tell me: What is the form you were filling out? What was the purpose?

THE WITNESS: It was a security investigation.

THE COURT: Who asked you to do it?

THE WITNESS: When Mr. Nyktas offered me the job, in the letter he said it would be necessary to complete some employment forms. I came into his office, I called up and made an appointment, I came into his office and filled out what he referred to.

THE COURT: This is in connection with the job that was offered to you, is that correct?

THE WITNESS: Yes, sir, the form that I filled out is entitled "Security Investigation Data for Sensitive Position.

THE COURT: I suppose you revealed your membership in the Socialist Workers Party in that, is that correct?

THE WITNESS: On this form, they do ask some questions about my political affiliation, which I answered honestly. They asked whether I am a member of the Communist Party of the United States, and I answered no. They asked if I belonged to any foreign or domestic associations, movements, etc., which advocate the overthrow of the Federal

[99]

Government by force, and I answered no, as I do not belong to any such organization, and did not at that time.

Q. After you had received the letter, filled out this form, what happened next?

A. Well, Mr. Nyktas told me that it would be a matter of a formality of them running this form through their security information system, and that I could expect to hear from him shortly and begin working.

Q. Did you hear from him?

A. No, I didn't. I didn't hear from him for about, I believe it was two or three weeks, and I was in a state of poverty and very anxious to start working, so I called him and I asked him, you know, when could I expect to start working.

Q. What did you learn?

A. Well, he was very evasive at that time. He said that I could not begin working there, and he could not go into detail about the reasons, but that I simply could not work there, and he apologized for it.

Q. Did you work there that summer?

A. No, I didn't.

Q. Did you take any steps in reaction to this development?

A. Yes, I was very upset about it and I contacted an attorney. I was not myself then licensed, and I contacted

[100]

an attorney in Cincinnati and we instituted a suit against the Federal Government for breach of the employment contract which they had created.

Q. Did you do anything else?

A. Well, we also — — When I went in to talk to the attorney, he asked me some questions about could I think of any reason why they would deny me the right to begin working there? I told him I had been involved in the antiwar movement and had been in a Socialist youth movement when I was younger, and I was aware of the fact that there were FBI forms on these movements, and perhaps I had a file, or perhaps there were some documents that formed the basis of my termination for employment.

THE COURT: Wait a minute, that terminated your employment?

THE WITNESS: Yes, sir.

THE COURT: Your employment never started, did it?

THE WITNESS: Well, I was offered the job and I had accepted it.

THE COURT: They made you a job offer subject to certain security checks, had they?

THE WITNESS: No, sir, it wasn't conditional upon that. The letter offering me the job was unconditional.

THE COURT: That's your interpretation of it.

[101]

THE WITNESS: Yes, sir.

THE COURT: Why did they run the security checks if the job offer was unconditional?

THE WITNESS: I am not sure what their internal policies are. I don't have any information about that. All's I know is that I was offered a job and I accepted it, there were no conditions placed on it.

THE COURT: Subject to security checks?

THE WITNESS: Well, sir, what Mr. Nyktas told me was not exactly — —

THE COURT: Mr. who?

THE WITNESS: Mr. Nyktas, who was the Assistant District Attorney at that time, who was the one that signed the letter offering me the job, and with whom I interviewed, he did not put it quite that way.

THE COURT: What is the status of your suit against the Federal Government?

THE WITNESS: It has been settled. It is no longer pending.

THE COURT: Did you get a monetary settlement?

THE WITNESS: Yes, I did, sir. There were also items of injunctive relief which were agreed upon. Should I go into those?

THE COURT: No.

[102]

Q. Were there any other, besides injunctive relief, any other terms in that settlement?

THE COURT: Just a minute. Settlement has nothing to do with this. You go ahead and ask the questions. You are trying to establish that this woman was not employed by the United States Attorney as a summer employee because of her connections either with the Socialist Workers Party or the — — Were you a member of the Socialist Workers Party at that time?

THE WITNESS: No, sir, I wasn't. I had attended Socialist Workers Party functions, but I wasn't a formal member.

Q. You weren't a member at that time?

THE WITNESS: No, sir.

THE COURT: You are trying to establish that she was not employed because she had been a member of this Socialist Workers Party, or is it a youth organization?

MR. BUCKLEY: Young Socialist Alliance, your Honor.

THE COURT: Is that your position?

MR. BUCKLEY: That is correct.

THE COURT: All right.

* * * *

[105]

LINDA MOHRBACHER

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BUCKLEY:

Q. Would you state your name and spell it, please?

A. Linda Mohrbacher (spelling) M-o-h-r-b-a-c-h-e-r.

Q. Where do you live, Miss Mohrbacher?

A. In Homestead, Pennsylvania, near Pittsburgh.

Q. Are you employed?

A. Yes, I am.

Q. Where?

A. At U.S. Steel, Edgar Thompson Works in Braddock, Pennsylvania.

Q. Are you a member of the Socialist Workers Party?

A. Yes, I am.

Q. Have you ever been a Socialist Workers Party candidate for public office?

A. Yes, I was the 1980 candidate for United States Senate in Pennsylvania.

Q. Do you know how many votes you got?

A. Over 27,000.

Q. Who was the SWP presidential candidate when you were on the senatorial slate?

A. Andrew Pulley.

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Q. Is Pulley black or white?

A. He is black .

Q. In connection with that campaign, did you distribute any Socialist Workers Party Pulley literature?

A. Yes, I did.

Q. At the steel mill?

A. Yes, at the Edgar Thompson Works.

Q. Fellow workers?

A. Yes.

THE COURT: Do you work there now, Linda?

THE WITNESS: I am laid off right now.

THE COURT: What kind of work do you do when you are not laid off?

THE WITNESS: I am a laborer.

THE COURT: Pardon me?

THE WITNESS: A laborer.

THE COURT: I mean, do you work as a laborer, do you work right along with men laborers?

THE WITNESS: Yes, I was a motor inspector apprentice, and I worked only with men, and then after that I was a laborer working mainly with men.

Q. Were you distributing that literature as early as November, 1979?

A. Yes, toward the end of November.

Q. Going back to November 1979, would you describe

[107]

for the Court an incident which you observed at work at which some Pulley literature was put to use that you had not intended it to be put to?

A. On the Monday after the Thanksgiving weekend, I took part, along with some other Pulley campaign supporters, handing out some leaflets that had the Andrew Pulley platform and picture on them. I subsequently went in to work at eight o'clock to start work, and I went into the shanty where all of the motor inspectors and millwrights gather. There were about thirty of them there, and what happened was that a millwright cut two of the leaflets with Andrew Pulley's picture into the shop of crosses, and then he lit them on fire and threw one of them onto the chest of a black worker, and then they were both thrown onto the floor and burned. There were thirty some workers standing around watching the picture of Andrew Pulley in the shape of a cross go up in flames. Did you want me to continue?

Q. Yes.

A. I then confronted this millwright who had set them on fire and said that I thought this was an act that was against freedom of speech and against black people. He told me in response – – and I also told him that I thought it was antiuion, because he was the – –

THE COURT: You what?

THE WITNESS: I also told him that this act

[108]

was antiunion, and that he especially as an assistant grievance man should never do anything like that. He told me that he was a millwright, and therefore he could do anything he wanted to do, and this was with the other workers listening.

Q. Between that November 1979 incident and the present, have you been subjected to any threats or shows of hostility, intimidation at the mill?

A. Yes, because, first of all what happened, soon afterwards is the next time I worked with this same man who burned the crosses, he threatened me in front of a group of workers, because he claimed that I was harassing him on the telephone, and he threatened that he was friends with the North Braddock police, and he said he was going to have them tap his phone and get me.

That same night he also hung crosses in the shanty, I was the only woman in the entire mill that night, and he hung these crosses in the shanty that evening.

There have been other sort of incidences of harassment and intimidation.

Q. How many, would you estimate?

A. Oh, I don't know.

Q. How many per week?

A. Several, when I am working. I was subsequently laid off for six months.

[109]

Q. Coming down to November 1980, right around Thanksgiving, you came off work one morning and observed something unusual. Will you tell that to the Court?

A. I was laid off for six months, and I went back to work the Sunday after Thanksgiving, and I went back on the 12:00 to 8:00 shift, midnight to eight in the morning, and the second night I was to work, when I came off work Monday morning December 1 at eight o'clock I found that my car had been totally and completely destroyed by a fire. The tires were melted, the license plate was melted, the engine was melted. There was absolutely nothing left of it.

Q. Where was the car parked?

A. The car was parked along what they call the Mill Road. It is the parking area that all of the workers at that end of the mill use while they are at work.

Q. Were there any other cars you saw damaged?

A. Yes, there were a number of other cars whose windows were broken, and there were three other cars who had started on fire also, but nowhere the extent of the damage that was done to my car, and there were hundreds of cars parked there.

Q. Also in November 1980, not at the mill but the SWP office, outside, did you notice anything unusual there?

A. Well, on October 31, right toward the end of the election campaign, we received some threats, and one part of

[110]

the threat was that KKK was written in the area surrounding our campaign headquarters,

and the Socialist Workers Party Headquarters, on the windows, on both sides of the headquarters, KKK was written all over, and a garbage can that is usually down at the corner was moved to directly across from the entrance to our headquarters and KKK was scrawled all over it, so it was sort of on three sides, KKK was written everywhere.

MR. BUCKLEY: I have no further questions, your Honor.

THE COURT: You may cross-examine, Mr. Staub.

— — —

CROSS–EXAMINATION

BY MR. STAUB:

Q. In connection with your 1980 Senate campaign, was your name and were pictures of you distributed in any manner?

A. Yes, we had a brochure that had my picture on it.

Q. Were there articles in the *Militant* concerning your candidacy?

A. Yes, a few.

Q. Did you distribute any political posters?

A. Not with my picture. We had Andrew Pulley and Matilda Zimmerman posters.

Q. Did your name appear on any of these posters?

[111]

A. No.

Q. Did any newspaper stories concerning your candidacy appear in newspaper of general circulation?

A. Yes.

Q. Approximately how many of those were there?

A. Well, at least a dozen, but probably more than that. I didn't see them all. They were all over the state.

Q. Do you ever engage in any activity at the plant concerning your political beliefs?

A. Yes.

Q. What would the nature of that activity be?

A. I campaigned for Andrew Pulley and Matilda Zimmerman and myself, explaining our ideas. I have been active in the union, the Steel Workers Union has organized actions against the plant itself. I have been active in that. The Steel Workers Union in the area I am in has done a lot of work to organize workers to go to pro ERA demonstrations. I have been involved in that, a number of things, labor solidarity, union strike support work in the union.

Q. In connection with these activities, have you made it known that you are a member of the Socialist Workers Party?

A. Yes, I have. It is no secret. I was a public open candidate for a year.

MR. STAUB: I have no further questions.

* * * *

[113]

JOHN THOMAS WILLIAMS

called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STAUB:

Q. Could you please state your name?

A. John Thomas Williams.

Q. What is your address, Mr. Williams?

A. 727 Dennison Avenue in Columbus.

Q. What is your educational background beyond high school?

THE COURT: Identify his employment first.

Q. What is your occupation?

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A. I am Assistant Elections Counsel to the Secretary of State.

Q. What is your educational background beyond high school?

A. I attended the University of Akron for four years, graduated with a B.A. in English in 1972. I did graduate work at the University of Akron and the University of Cincinnati and graduated, attended law school at the University of

Cincinnati, graduating in 1978.

Q. Are you admitted to the practice of law in any jurisdiction?

A. I was admitted to the Ohio Bar in November of 1978 and the the Bar of the Southern District of Ohio in December of '78.

Q. By what office of State Government are you employed?

A. The Secretary of State's office.

Q. Is the Office of the Secretary of State divided into various departments?

A. Yes, it is divided into several departments.

Q. In what department do you serve?

A. I work in the Elections Section.

Q. In what capacity do you serve in the Office of the Secretary of State?

A. I am Assistant Elections Counsel.

[115]

Q. How long have you held this position?

A. Since March of 1979.

Q. What are the functions of the Elections Department of the Secretary of State's office?

A. The Elections Department handles all of the Secretary of State's duties in respect to his capacity as Chief Elections Officer for the State of Ohio.

Q. What are your duties as Assistant Elections Counsel?

A. In addition to administrative duties, for the most part I am a legal advisor to the 88 Boards of Election of Ohio. I am on call to them by phone, by visit, by appointment, and to any citizen, attorney from this state or others who cares to come in and ask about questions of law, procedures that we handle.

Q. In connection with your official duties, do you hold any positions with other public bodies?

A. I am also staff counsel to the Ohio Elections Commission.

Q. How long have you held this position?

A. Since December of '79.

Q. What are the duties of the Ohio Elections Commission?

A. The Ohio Elections Commission investigates violations of law under the Ohio Campaign Finance Reporting Act, the Unfair Campaign Practices Act, and certain violations regarding identifications on political communications.

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Q. What are your duties as staff counsel to the Commission?

A. I handle most of the personal contacts with parties and witnesses before the Commission. I prepare the cases, keep the files in order, and at Commission meetings I am present on the dais with the Commission and advise them on procedural, evidentiary and substantive points of law.

Q. For what reason do you serve on both the Ohio Secretary of State and the Ohio Elections Commission?

A. The Secretary of State provides the legal and clerical staff necessary for the Commission to operate.

Q. In connection with your official duties, are you familiar with any financial reports filed by campaign committees?

A. Yes, I am.

Q. What is the nature of the information that is set forth in these reports?

A. On any given report, there would always be a cover sheet. The cover lists the last balance reported on that committee's previous report. The cover sheet would list all contributions on that report, that is on that filing, all total expenditures on that filing. It would then set forth a new balance, and there is a space for the disposition of that balance.

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At the heading of the cover sheet, of course, there is the name of the committee, its business address, the name of the treasurer, the treasurer's address, and then there is a place for signature and date at the bottom. Then most reports would follow with a statement of contributions sheet or sheets in which there are spaces for the amount of the contribution to be listed, the date of receipt, the name and full residence address of the contributor and the type of contribution it was; whether it was money or cash or check, or whether it was an in-kind contribution.

Each sheet has a subtotal. Then that would be followed by an expenditure sheet with the date of the expenditure, the amount of the expenditure, to whom it was expended, the name and address of the business or the individual, the purpose of that expenditure, whether it was for signs or telephone service or rental, and each sheet would then carry a subtotal.

Q. Where are these reports filed?

A. These reports might be filed with the Secretary of State's office or with one of the 88 Boards of Elections.

Q. With respect to those reports that are filed with the Office of the Secretary of State, where are such reports kept within the office?

A. The original reports are kept in the office of the administrator. There is a bank of file cabinets in his office.

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Then there are public access copies which are in the main room of the Elections Department in a wide open hallway. It happens it is just outside my office, and another bank of file cabinets.

Q. Are these public access copies available for inspection by the members of the public?

A. Yes, upon request.

Q. If a member of the public wishes to inspect such a report, what procedure is followed?

A. The individual comes to the office, makes a request of any of the employees giving them the nature of the report or the name of the committee and which report it was. The employee pulls the file of that committee from the filing cabinet, it is handed to the person who requested it, and they are directed to a table where they can sit and review the report for any amount of time they need up until the closing time for the office.

Q. Are members of the public able to make copies of such reports?

A. Yes, they are.

Q. When a report is filed with the Office of the Secretary of State, is it reviewed by your section of the office?

A. Yes, it is.

Q. What is the nature of this review?

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A. The review covers any one of the requirements that the law imposes on those filings. They are checked to determine whether all contributors are fully listed, whether there seemed to be contributions listed on the report of the type that are prohibited by law. There are checks to determine whether the receipts required by law are present, and there are quite a number of things that can be reviewed in any given report.

One of the initial things is the time of the filing. Since the law imposes strict deadlines, that is one of the first things that is checked. They are time stamped. If the time stamp is

later than the deadline for that particular filing, then that is something that would be checked almost immediately.

Q. What procedure is followed by your office if this audit or examination discloses an irregularity?

A. If the auditor finds something that appears to be an irregularity, the first step would be to correspond with the treasurer responsible for that filing, requesting an addendum for the treasurer to supply the missing materials, or for any information that would clarify the problems that the auditor has found.

Q. What is done if an irregularity cannot be satisfactorily resolved through contact with the treasurer of the committee?

[120]

A. On occasion there is an unsatisfactory response, or on other occasions there is no response at all. At such time as the auditor determines that the question has not been resolved, a referral sheet is typed up which lists at the top the name of the committee, its address, the treasurer, and listing all the violations or apparent violations of law. That is attached to a copy of the report and is then forwarded to the Elections Counsel for his determination as to whether it will be referred or not.

Q. If a decision is made by the Elections Counsel to refer a matter to the Elections Commission, what procedure is followed?

A. If he determines that it is going to be referred, he signs that referral, and the referral with the

attached report is taken to the desk of the Commission's secretary, Mrs. Helen Robinson. She then prepares a notification for the treasurer, notifying the treasurer that a hearing before the Commission will be held on the matter. That's usually an initial discussion. That notification is sent by certified mail and the treasurer, the responsible individual, is given the opportunity to respond by affidavit in clarification of any problem that has been cited with that report.

Q. What are the procedures followed by the Elections Commission on receipt of such a referral?

A. The Commission offers an abundant amount of time

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for the responsible individual to respond by affidavit. When that affidavit is received, the response is taken to the Commission; on occasion, a responsible individual will appear before the Commission at its hearing to make a statement of clarification as to whatever the problem is. That evidence is received, whether by personal appearance or by affidavit, and the Commission bases any further action it has on those statements. There are times when we have no response at all.

Q. Does the Elections Commission ever conduct formal hearings concerning the matters referred to it by the Secretary of State?

A. Yes. After those initial stages have been completed, if there has been no response, or if the response has still not been sufficient, the Commission may deem it necessary to conduct a full investigative hearing into the matter.

The Commission refers to this as a public hearing, but in fact all the hearings and all their meetings and deliberations are public. When this is the case, they deliberate as to their particular feelings about the case at that stage and vote to determine whether a public hearing is necessary. There are five members of the Commission and two votes are sufficient for the holding of a public hearing.

Q. If a public hearing is conducted by the Committee,

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what procedures are followed at that hearing?

A. At the hearing, the individual who is responsible is called before the Commission, and after being subpoenaed, they are requested to answer under oath, the testimony taken by a court reporter, as to the circumstances of the violation for some clarification, for their background, knowledge of campaign financing law. That is often an area the Commission goes into to try and ascertain their experience and their familiarity with the filing laws.

Q. Are these individuals given the opportunity to present testimony of other witnesses?

A. Yes.

Q. And produce exhibits?

A. Yes, they are.

Q. Subsequent to the conduct of such a hearing, what steps does the Commission take?

A. When a case has proceeded that far, there are three options the Commission has. The statements from the witnesses may have made it apparent that there was in fact no violation at all originally, and in those cases the Commission will find that no violation had occurred.

Then there is the situation in which it becomes apparent from discussions with the witnesses that the person responsible for the filing was ignorant of some provision of the law, negligent or a victim of circumstances in losing

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records, any number of circumstances, really, and that there was a violation but it was of a nonwilful variety.

The Commissioners are empowered by law to make a finding that a violation had occurred but that it was a nonwilful violation. They tend to refer to these as technical violations.

The Commission makes that finding, but there is no action beyond that finding.

Then in some cases, circumstances may indicate that the responsible individual was fully aware of the filing requirement and of the specific provisions, and that there is probable cause to believe that the error was purposeful, and in that case the Commission will vote to refer a case for local prosecution.

Q. To what officials are such referrals made?

A. That is made to the County Prosecutor of the county where the committee operated. The transcript is made up following such a hearing,

the exhibits are made up in finished form, and the whole file, with transcript, is forwarded to that prosecutor with a copy of the Commission's findings.

MR. STAUB: I have no further questions.

THE COURT: Do you wish to cross-examine, Mr. Buckley?

MR. BUCKLEY: No, your Honor.

(Witness excused.)

* * * *

Plaintiffs' Exhibit 54, United States District Court
for the Southern District of Ohio Eastern Division,
Case No. C-2-75-92

3005 Federal Office Building
Cleveland, Ohio 44109

April 6, 1978

Mr. Charles A. Hahn
Investigator in Charge
Civil Service Commission
Room 2965
Federal Office Building (Material Expunged in Exhibit)
1240 East Ninth Street
Cleveland, Ohio 44109

Dear Sir:

Reference is made to your name check request regarding (Material Expunged in Exhibit)

The files of the Cleveland Office of the Federal Bureau of Investigation contain no information regarding (Material Expunged in Exhibit) However, Cleveland files contain information regarding her brothers, (Material Expunged in Exhibit)

In the past, both brothers were the subjects of internal security type investigations by the Cleveland Office of the FBI.

Except as indicated above and based upon data submitted, no identifiable information pertinent to your inquiry was located in the files.

This is the result of a request for an FBI name check only and is not to be considered as a clearance.

Very truly yours,

Stanley S. Czarnecki
Special Agent in Charge

1 - Addressee (By hand)
5 - Cleveland (Material Expunged in Exhibit)
1 - (Material Expunged in Exhibit)
1 - (Material Expunged in Exhibit)
1 - (Material Expunged in Exhibit)

WAT/ja
(6)

017974

Plaintiffs' Exhibit 102 (portions omitted),
United States District Court for the Southern District
of Ohio Eastern Division, Case No. C-2-75-92

FD-204(Rev. 3-3-59) (Material Expunged in Exhibit)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
(Material Expunged in Exhibit)

1 - U.S. Secret Service, Cleveland, Ohio
(By Hand)
1 - Columbus Resident Office, 902nd Military
Intelligence Group, Defense Construction
Supply Center, Columbus, Ohio 43215
Copy to: (RM)
1 - NIS, Flushing and Washington Avenue,
Brooklyn, New York, 11251 (RM)
1 - OSI, Department of the Air Force, Wright-
Patterson AFB, Dayton, Ohio 45433
(RM) (Material Expunged in Exhibit)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSFIED EXCEPT WHERE SHOWN OTHERWISE.

Report of: (Material Expunged in Exhibit)
Office: Cleveland, Ohio
Date: (Material Expunged in Exhibit)

Field Office Bureau File No: 100-427226
File No: 100-23460

Title: YOUNG SOCIALIST ALLIANCE
CLEVELAND DIVISION
(Material Expunged in Exhibit)

Character: INTERNAL SECURITY – SOCIALIST
WORKERS PARTY

Synopsis: (Material Expunged in Exhibit)

* * * *

Plaintiffs' Exhibit 110 (portions omitted),
United States District Court for the Southern District
of Ohio Eastern Division, Case No. C-2-75-92

(seal omitted)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SOCIALIST WORKERS PARTY, et al.,
Plaintiffs,

- against - 73 Civ. 3160 (TPG)

THE ATTORNEY GENERAL OF THE
UNITED STATES, et al.,
Defendants.

FINAL REPORT OF SPECIAL MASTER CHARLES D. BREITEL

February 4, 1980

* * * *

[20]

Part I

Government's Admissions

The concessions noted in this section were derived alsmost verbatim from various submissions by the Government. (See pages 15-16, *supra*)

A. Plan of investigation

From approximately 1961 to 1971, the FBI maintained a counterintelligence program (Cointelpro) against the SWP and YSA entitled the "SWP Disruption Program", which consisted in part of the dissemination of information by the FBI designed to impair the ability of the SWP and YSA to function.

The FBI also maintained counterintelligence programs against the Comjunist Party, USA and the New Left. Thses two programs involved a number of activities against the SWP and YSA.

The tactics utilized in these programs included disclosing to the press the criminal records of SWP candidates, and sending anonymous letters to SWP members, supporters, spouses, and employers.

Informant involvement in the counterintelligence programs consisted in part of providing the FBI with information it utilized in anonymous letters and of reporting to the FBI on the effects of counterintelligence programs.

[21]

The FBI's investigation of the SWP and YSA was conducted pursuant to the instructions contained in Section 87 of the FBI Manual of Instructions ("the Manual").* Pursuant to the instructions in Section 87 of the Manual, FBI Special Agents investigating the plaintiff organizations were responsible for obtaining and recording information concerning:

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* I am advised that Section 87 of the Manual, with the revisions made to it during the period covered by plaintiffs' discovery, has been produced to plaintiffs under a protective order.

a. The location of the organizations' (1) national headquarters and (2) chapters and local branches;

b. The stated aims and purposes of the organizations;

c. The identity of the organizations' leaders and members;

d. The size and composition of the organizations' membership;

e. The contents of the organizations' publications;

f. The sources of the organizations' funds and the nature of their expenditures;

g. The organizations' connections with and infiltration of other groups; and

[22]

h. The organizations' activities.

From at least 1960 until 1976, Section 87 of the Manual instructed FBI field offices to develop informants on all levels of organizations, such as SWP and YSA, which were the subjects of domestic security investigations. These informants were utilized as a source for obtaining information concerning such organizations. Other methods of obtaining information included interviewing past and present organization members and persons associated with them, and monitoring organization bank records, publications, and public meetings.

Between 1960 and 1976, the FBI in its investigation of the plaintiff organizations also obtained information by the following means:

a. Direct electronic surveillance of the SWP between at least 1960 and 1963;

b. Surreptitious entries of SWP and YSA facilities by FBI Special Agents between at least 1960 and 1966; and

c. A mail cover of the SWP in 1973.

The FBI informants who were members of the SWP and YSA were instructed to and generally did provide detailed reports to the Special Agent with whom they were in contact. These reports (1) described the subject matter of every party meeting or activity the informant attended and (2) identified, gave physical descriptions and background data, such as

[23]

employment, residence and marital status, concerning the people they came in contact with in the SWP or YSA. In addition, each member informant was instructed to and generally did provide the FBI with copies of SWP and YSA documents, including mailing and membership lists, to which they had access by reason of their relationships with other members or their positions within the organizations.

B. Scope, extent, and comprehensiveness of infiltration of the SWP and YSA by FBI informants between 1960 and May 1976

Since 1960 there were approximately 300 FBI informants who were members of one or both of the plaintiff organizations and 1,000 non-member informants.* During this period, the numbers of FBI informants in the plaintiff organizations were as follows:

---

* The non-member informant count is limited to persons who provided information to the FBI on at least two occasions.

SWP		YSA	
1960	52	1960	9
1961	54	1961	11
1962	53	1962	10
1963	51	1963	7
1964	52	1964	9
1965	49	1965	11
1966	47	1966	12
1967	39	1967	14
1968	34	1968	23
1969	32	1969	38

[24]

SWP		YSA	
1970	30	1970	58
1971	32	1971	77
1972	33	1972	83
1973	28	1973	77
1974	24	1974	75
1975	23	1975	62
1976	19	1976	41

Because approximately 20 informants were members of both organizations at the same time, the foregoing list to that extent overstates the total number of member informants.

There are a total of 59 FBI field offices. During the years at issue, the number and percentage of the FBI field offices to which SWP and YSA members informants were reporting were as follows:

Year	SWP	YSA
1960	16 (27.1%)	8 (13.6%)
1961	17 (28.8%)	7 (11.9%)
1962	17 (28.8%)	7 (11.9%)
1963	17 (28.8%)	6 (10.2%)
1964	17 (28.8%)	5 (8.5%)
1965	16 (27.1%)	7 (11.9%)
1966	15 (25.4%)	7 (11.9%)
1967	14 (23.7%)	8 (13.6%)
1968	13 (22.0%)	13 (22.0%)
1969	13 (22.0%)	21 (35.6%)
1970	14 (23.7%)	28 (47.5%)
1971	14 (23.7%)	29 (49.2%)
1972	15 (25.4%)	28 (47.5%)
1973	15 (25.4%)	30 (50.8%)
1974	13 (22.0%)	29 (49.2%)
1975	14 (23.7%)	28 (47.5%)
1976	13 (22.0%)	23 (39.0%)

In fifteen or more of the almost 17 years covered by plaintiffs' discovery, one or more SWP or YSA member informants

[25]

were reporting to each of the following FBI field offices*:

Boston	St. Louis
Chicago	San Diego
Cleveland	San Francisco
Los Angeles	Detroit
Minneapolis	New York

---

* The FBI field office to which one informant reported is not listed because to do so would risk revelation of the informant's identity.

During at least seven of the years at issue, one or more SWP or YSA member informants were reporting to each of the following FBI field offices:

Denver	Baltimore
Newark	Cincinnati
Houston	Indianapolis
Milwaukee	San Antonio
Philadelphia	Washington
Seattle	New Haven
Atlanta	

Approximately 55 FBI informants held offices or committee positions in the SWP and YSA between 1960 and 1976. With one exception, none of the informants held any of the following national offices or national committee positions in the SWP or YSA:

Position

SWP – National Committee
SWP – Political Committee

YSA – National Committee
YSA – National Executive Committee

[26]

Position

SWP – National Secretary
SWP – National Organization Secretary

YSA – National Chairperson
YSA – National Secretary
YSA – National Organization Secretary

One informant held a national position in the YSA. This was a national committee position and was held by an informant whose service to the FBI began in mid-1960 and ended in 1962. The highest SWP office held by an FBI informant, No. 220, was as an alternate member to the SWP National Committee.*

Approximately 21 informants served on branch or local executive committees of SWP and two served as branch or local organizers. In addition, John Hollowell, whose file was produced to plaintiffs in 1976, served as an acting organizer of the San Diego Branch of the SWP.

Approximately 30 informants served on local or city executive committees of the YSA and six served as local or city organizers of the YSA.

* * * *

[52]

9. There are references in 1973 informant reports to physical attacks by the National Caucus of Labor Committees (NCLC) against SWP and YSA and the resulting cancellation of several scheduled SWP-YSA events. One of the reports indicates that several SWP members were hospitalized as a result of an NCLC attack. The informant's report contains no information about NCLC itself but there is a cross-file reference on NCLC of 100-165744.

10. During a 1973 meeting reference was made to the bombing of PRDF and related offices by undescribed right-wing terrorists in conjunction with the Federal Government.

11. In 1975, a description of a bombing of the Los Angeles SWP headquarters was read at an SWP meeting in San Francisco.

* * * *

[57]

E. References to this lawsuit

1. In 1973, an informant reported that an SWP member had spoken about a branch's involvement in the SWP lawsuit and had said:

> "1. 5 supporters of the SWP in Seattle were contacted by the FBI, and the FBI tried to scare them off by informing them that it was a subversive organization – that the parents of a highschool girl were told by the FBI that their daughter was involved with a 'violent organization.' 2. The [Washington State] Attorney general turned over to the FBI petitions of signatures to put minority parties on the ballots, which the FBI then used to contact these people. 3. The SWP has concluded that the shotgun blast of the Militant Bookstore – before Linda Jiness visited Seattle before the '72 election may be connected with the CIA."

* * * *

(clerk stamp deleted)

SUPREME COURT OF THE UNITED STATES

No. 81-776

Ted W. Brown, et al.,

Appellants,

v.

Socialist Workers '74 Campaign Committee (Ohio), et al.

APPEAL from the United States District Court for the Southern District of Ohio.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted.

December 14, 1981

(seal deleted) (clerk's certification deleted)

Motion to Dismiss or Affirm

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CASE NO. 81-776

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

TED W. BROWN, et al.,
Appellants,
v.
SOCIALIST WORKERS '74 CAMPAIGN COMMITTEE (OHIO) et al.
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

MOTION TO AFFIRM

THOMAS D. BUCKLEY, JR.

GORDON J. BEGGS
(Counsel of Record)
American Civil Liberties
Union of Cleveland
1223 West Sixth Street
Cleveland, Ohio 44113
(216) 781-6276

BEN SHEERER
Suite 611
614 Superior Avenue West
Cleveland, Ohio 44113

BRUCE CAMPBELL
360 South Third Street
Columbus, Ohio 43215

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CASE NO. 81-776

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MOTION TO AFFIRM

Appellees pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the final judgment and decree of the District Court be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

STATEMENT AND ARGUMENT

The question presented is whether the facts proven at trial establish appellees' right to be exempt from the financial disclosure provisions of the Ohio Campaign Expense Reporting statute, Ohio Revised Code Sections 3517.10 and 3517.11, under the law on this issue already decided in Buckley v. Valeo 424 U.S. 1 (1976).

The sufficiency of the evidence is the only matter in dispute on appeal.

Appellees offered in evidence the trial testimony of 12 witnesses, the

deposition of 2 witnesses and 125 documentary exihibits.

On the basis of the entire record a three-judge court of one Senior Circuit Judge and two District Judges held that the appellees, who are candidates, campaign committees and campaign treasurers of the Socialist Workers Party (SWP), had met their burden of proof under the applicable constitutional standard.

In Buckley v. Valeo this Court ruled on the constitutionality of the application to small parties of laws requiring disclosure of the names of campaign contributors and people receiving disbursements of campaign funds. It was held that a blanket exemption for all minor parties was not required but that associational rights must be protected, and that a minor party would be entitled to an exemption upon

showing a reasonable probability that disclosure of the names would lead to "threats, harassment or reprisals from either government officials or private parties." 424 U.S. at 74.

The Court recognized that the harmful consequences of disclosing the names of contributors to an unpopular minor party would be difficult to establish by direct proof. Circumstantial evidence is authorized. The opinion states:

> "The proof may include, for example, specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats or specific manifestations of public hostility may be sufficient." 424 U.S. at 74.

That this is the legal standard to be applied to the facts in this case has never been in dispute.

And the application of the same standard to the SWP has been considered

in other proceedings in addition to this case. The Federal Election Commission, after extensive fact finding, granted an exemption to the SWP from the federal disclosure provisions which were considered in Buckley v. Valeo. The Ohio Campaign Expense Reporting Law is similar to the federal statute.

One other three-judge District Court has also held that SWP candidates are entitled to an exemption from a state campaign finance disclosure law. Wisconsin Socialist Workers 1976 Campaign Committee v. McCann 433 F.Supp 540 (E.D. Wis. 1977). And administrative agencies in Minnesota and Illinois have determined that the Socialist Workers Party satisfies the standards of Buckley v. Valeo, (although in Illinois it was determined that the state agency did not have the administrative power to grant an exemption from the state legislation.)

One District Court, in Oregon, with one judge dissenting, held that an exemption for Socialist Worker Party candidates was not required under Buckley v. Valeo. Oregon Socialist Workers 1974 Campaign Committee v. Paulus 432 F. Supp. 1255 (D. Ore 1977) But there is no dispute among the Districts as to the applicable legal standard in cases such as this one. In the Oregon case the proof offered at trial was not similar to what appellees have proven in this case. The court in Oregon said that "The evidence shows, at most, a few isolated cases of the receipt of highly critical and negative telephone calls and letters." 432 F.Supp. at 1259 The court characterized the evidence as even weaker than that in Buckley v. Valeo.

By contrast, appellees in this case have proven not only past, but contemporary federal harassment of SWP

members on account of their membership. It was proven that within three months of trial, the U.S. Navy had caused three civilian SWP members to lose their jobs. (They were later reinstated by their private employer.) Evidence also showed loss of employment by 19 SWP members, attributable to their membership, within a year of the trial. There was other evidence of denial of federal employment at an earlier time but during the pendency of the suit. There was evidence of physical violence: a shooting incident, an arson committed at an SWP office, the burning of SWP campaign literature, and the destruction of an SWP candidate's automobile. Appellees also proved receipt of threatening phone calls and a "hate" letter.

The Oregon case is clearly distinguishable on the weight of the evidence from this one, because proof of

a few such phone calls and letters was "most" of the evidence in that case. It is the least of the evidence appellees have presented in this case.

Appellants maintain that the proof shows only "isolated incidents of harassment within Ohio during recent years." In fact, however, the proof shows that within a year of trial four SWP members in Ohio lost their jobs in circumstances indicating the reason was their SWP membership. There are only about 60 SWP members in Ohio. In such a small context, it is inaccurate to characterize even those incidents as "isolated." Altogether nine witnesses testified to "threats, harassment or reprisals" directed at them as members or at the organization in recent years in Ohio. Such incidents are not "isolated"; the record shows they are pervasive.

Appellants also contend that evidence of threats, harassment and reprisals outside of Ohio is not pertinent. That contention, on the face of it, has no merit with respect to appellee's proof of recent federal employment harassment in New York. It is also without merit with respect to private harassment outside Ohio. There is proof in the record that the SWP is a national party, espousing the same positions everywhere in the country. There is however no demographic evidence in the record tending to show that private persons outside Ohio are any more or less likely to show hostility to the SWP than are people in Ohio. There is thus no basis in the record for discounting in any way appellees' evidence of arson in Illinois, firings in Georgia and other hostility elsewhere directed at the SWP. And common sense itself indicates that there is no reason

to suppose the Americans in Ohio are any less hostile to the SWP than people elsewhere. Therefore, while the Ohio evidence is ample in itself to satisfy the Buckley v. Valeo standard, the totality of the evidence should be considered, and it overwhelmingly meets that standard.

Appellees also proved the long history of federal hostility and harassment pursuant to the FBI's "SWP Disruption Program." Proof of other federal agency action against the SWP is also in the record. There is no evidence that such other federal agencies, for example the Immigration and Naturalization Service, have ever stopped harassing the SWP.

For their part, appellants proved that nominating petitions for various SWP candidates have been signed by more than five thousand persons in Ohio. In Ohio,

nominating petitions do not state the party affiliation of the candidate seeking a place on the ballot. Hence the relevance of these petitions on any issue is not clear. Because the "Socialist Workers Party" name does not appear on the petitions, willingness to sign isn't evidence of willingness to be associated with the SWP. Nor do the typical circumstances, on street corners, where such signatures are gathered, indicate any reliability for such petitions as gauges of public attitudes.

The law on the issue in this case was stated in Buckley v. Valeo as follows:

> Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment or reprisals from either Government officials or private parties.

A three judge court has fully considered the evidence in this case and determined that an exemption from the Ohio campaign financial disclosure law is required here.

CONCLUSION

For the reasons stated herein, the judgment should be affirmed.

THOMAS D. BUCKLEY, JR.

GORDON J. BEGGS
(Counsel of Record)
American Civil Liberties
Union of Cleveland
1223 West Sixth Street
Cleveland, Ohio 44111

BEN SHEERER
Suite 611
614 Superior Avenue West
Cleveland, Ohio 44113

BRUCE CAMPBELL
360 South Third Street
Columbus, Ohio 43215

Appellant's Brief

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CASE NO. 81-776

IN THE
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OCTOBER TERM, 1981

TED W. BROWN, *et al.,*
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SOCIALIST WORKERS '74 CAMPAIGN COMMITTEE (Ohio) *et al.*
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

BRIEF FOR APPELLANTS

WILLIAM J. BROWN
Attorney General of Ohio

THOMAS F. STAUB
Assistant Attorney General
Counsel of Record

GARY ELSON BROWN
Assistant Attorney General

State Office Tower
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 466-8600

Attorneys for Appellants

February, 1982

QUESTION PRESENTED

Whether, under the standards set forth by this Court in **Buckley v. Valeo,** 424 U.S. 1 (1976), the provisions of Sections 3517.10 and 3517.11 of the Ohio Revised Code, which require that the campaign committee of a candidate for public office file a report disclosing the full names and addresses of persons making contributions to or receiving expenditures from such committee, are consistent with the right of privacy of association guaranteed by the First and Fourteenth Amendments to the Constitution of the United States when applied to the committees of candidates of a minority party which can establish only isolated instances of harassment directed toward the organization or its members within Ohio during recent years.

PARTIES TO THE ACTION IN THE DISTRICT COURT

The plaintiffs in this action in the District Court were: the Socialist Workers '74 Campaign Committee; Meyer Alewitz; Nancy Brown, Socialist Workers Party candidate for Governor of Ohio; Phil Lazar, Socialist Workers Party candidate for United States Senator from Ohio; Charles Mitts, Socialist Workers Party candidate for United States House of Representatives from the First Congressional District of Ohio; Marguerite Snyder, Socialist Workers Party candidate for United States House of Representatives from the Twenty-first Congressional District of Ohio; Bernie Senter, Socialist Workers Party candidate for the United States House of Representatives from the Twenty-third Congressional District of Ohio; Herman Kirsh, Socialist Workers Party candidate for Lieutenant Governor of Ohio; Carol Knoll, Socialist Workers Party candidate for Attorney General of Ohio; J. Doe; a contributor to the Socialist Workers '74 Campaign Committee (Ohio); J. Roe, a non-contributor to the Socialist Workers '74 Campaign Committee (Ohio); J. Soe; a person to whom an expenditure was disbursed by the Socialist Workers '74 Campaign Committee (Ohio); the Socialist Workers Campaign Committee; Robert Bresnahan, Socialist Workers Party candidate for Mayor of Cleveland, Ohio; Christine Gauvreau, Socialist Workers Party candidate for the Cleveland Ohio School Board; and Ernest Mailhot. In addition, the District Court certified a class of plaintiffs consisting of all Socialist Workers Party candidates for Ohio statewide or local elected political office, their campaign committees, their campaign treasurers, and the people who contribute to or receive disbursements from their campaign committees.

The original defendants in this action, who were named in both their official and individual capacities, were Ted W. Brown, Ohio Secretary of State, and the members of the Ohio Elections Commission, Nolan W.

Carson (Chairman), Barbara Rodemeyer, Charles E. Shanklin, Alexander Prisley, and Daniel O'Loughlin. During the pendency of the action in the District Court, the terms of the various members of the Ohio Elections Commission expired and their successors in office became parties to the action in their official capacities. The successors in office to the members of the Comission originally named as parties were: William W. Taft (Chairman), Lloyd George Kerns, C. William Brownfield, Joel H. Mirman, Phyllis S. Nedelman, Robert McAllister, and Randall W. Sweeney. All of these individuals have since been succeeded in office by the current members of the Ohio Elections Commission, who are parties to this action in their official capacities. The current members of the Commission are: Mary Jane McDonald (Chair), Leo Blackburn, Martin J. Hughes, Harold T. Duryee, and Thomas Kaplin.

Ted W. Brown has also been succeeded in office by Anthony J. Celebrezze, Jr., Ohio Secretary of State, who is a party to this action in his official capacity.

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Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

BRIEF FOR APPELLANTS

The appellants, the Secretary of State of Ohio and members of the Ohio Election Commission, respectfully submit this brief in support of their appeal of the decision of the United States District Court for the Southern District of Ohio Eastern Division.

OPINION BELOW

The opinion of the United States District Court for the Southern District of Ohio Eastern Division, dated June 25, 1981, appears in the appendix to the Jurisdictional Statement previously filed in this matter, p. A-2. This decision has not been reported.

JURISDICTION

The District Court held that the appellee's claim for relief arose under 42 U.S.C. Section 1983, and found jurisdiction under 28 U.S.C. Sections 1343 (3), 2201 and 2202. A Three-Judge Court was convened under the provisions of 28 U.S.C. 2281.[1]

The judgment of the District Court, declaring Sections 3517.10 (B) (4) (b), (5) (b) and 3517.11 Ohio Revised Code unconstitutional as applied to the appellees' class, and enjoining appellants from requiring members of the class to comply with the requirement of Section 3517.10 Ohio Revised Code that the full name and address of each person making a contribution to or receiving an expenditure from a Socialist Workers Party candidate's campaign committee be disclosed in public filings with the Secretary of State and county boards of election, was entered on June 25, 1981 (J.S. App. A-29).

Pursuant to the provisions of 28 U.S.C. Section 2101 (b), a notice of appeal to this Court was duly filed in the United States District Court for the Southern District of Ohio Eastern Division on August 21, 1981 (J.S. App. A-30).

This appeal was docketed within sixty days from the filing of the notice of appeal in the District Court through the filing of appellants' jurisdictional statement on October 20, 1981. Probable jurisdiction was noted on December 14, 1981 (JA-106).[2] The jurisdiction of this Court rests upon 28 U.S.C. Section 1253.

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[1]Section 2281 was repealed effective August 12, 1976, but the repeal was not applicable to any case commenced on or before that date. Pub. L.94-381.

[2]The Designation JA-____ is used in this brief for reference to items which are set forth in the joint appendix. The designation R-____ refers to pages of the original trial transcript which do not appear in the joint appendix.

CONSTITUTIONAL PROVISIONS AND STATUTES

First Amendment, United States Constitution:

Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section 1, Fourteenth Amendment, United States Constitution:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 3513.261, Ohio Revised Code:

This statute is set forth in the appendix hereto, p. A-1 *infra.*

Section 3513.262, Ohio Revised Code:

This statute is set forth in the appendix hereto, p. A-6 *infra.*

Section 3517.10, Ohio Revised Code:

This statute is set forth in the appendix hereto, p. A-8 *infra.*

Section 3517.11, Ohio Revised Code:

This statute is set forth in the appendix hereto, p. A-13 *infra.*

STATEMENT OF THE CASE

This case was initiated on October 24, 1974, by the filing of a complaint in the United States District Court for the Northern District of Ohio Eastern Division. Named as plaintiffs were various candidates, campaign committees, and campaign treasurers associated with the Socialist Workers Party, together with persons who had made contributions to or received disbursements from such organizations. Named as defendants were the Ohio Secretary of State and members of the Ohio Elections Commission. The complaint challenged the constitutionality of certain of the provisions of Chapter 3517. Ohio Revised Code, the Ohio Campaign Finance Reporting Act, insofar as they required the disclosure of the identities of persons making contributions to or receiving disbursements from plaintiff committees.

Subsequently, the case was transferred to the United States District Court for the Southern District of Ohio Eastern Division, and a Three-Judge Court was convened pursuant to the provisions of 28 U.S.C. Section 2281.

The District Court did not certify to the Ohio Attorney General, pursuant to the provisions of 28 U.S.C. 2403 (b), the fact that the consitutionality of certain sections of the Ohio Revised Code was drawn in question in this action. The provisions of 28 U.S.C. 2403 (b) were inapplicable since the Ohio Secretary of State and the members of the Ohio Elections Commission were parties to this action.

Section 3517.10 of the Ohio Revised Code requires campaign committees and political parties to file reports setting forth information concerning their receipts and expenditures. Among the information which must be submitted are the names and addresses of persons who make contributions (with the exception of contributions of twenty-five dollars or less made in connec-

tion with any one fund raising event) and the name and address of each person to whom disbursements were made. The required reports are prepared on forms prescribed by the Ohio Secretary of State. Pursuant to the provisions of R.C. 3517.11 those reports which relate to the nomination or election of statewide candidates must be filed with the Secretary of State. Otherwise, they must be filed with the Board of Elections of the applicable county.

The matter came to trial on February 23, 1981. Evidence introduced at trial indicated that the Socialist Workers Party is a small, minor political party with branches in three Ohio cities; Cleveland, Toledo, and Cincinnati. The Cleveland branch has approximately 26 members, the Toledo branch 12, and the Cincinnati branch 20 (JA-19, 24). Party members carry out political activities to further their political views and to win people over to their ideas. The national party publishes both an English and a Spanish language newspaper. In New York the party has a publishing house for books and pamphlets. The Ohio branches operate bookstores to sell the political literature (JA-20-21). As a regular part of its activities, the Socialist Workers Party regularly fields candidates for local, state, and national political offices (JA-21; J.S.App. A-13). While the party itself has a small membership, its candidates can have a significant impact in close elections. The Socialist Workers Party candidate for United States Senate from Ohio in 1980, for example, received approximately 76,000 votes (JA-20).

The evidence presented to the District Court concerning harrassment of the Socialist Workers Party and its members fell into three main categories. First, appellees submitted documentary evidence relating to activities of the Federal Bureau of Investigation concerning the Socialist Workers Party during the 1960's and early 1970's. Second, they submitted testimony can certain exhibits concerning instances of harassment occuring

outside the State of Ohio. Third, appellees submitted evidence concerning a few isolated instances of alleged harassment occuring within Ohio during recent years.

The first category of evidence submitted by appelles consisted of material relating to allegedly disruptive activity conducted by the Federal Bureau of Investigation involving the Socialist Workers Party during the 1960's and early 1970's. Much of the material related to a period of time ten to twenty years in the past. Appellees did not submit any evidence at all concerning this alleged governmental harassment dating from recent years. The most recent evidence presented on this point concerned activities which occurred near the cessation of the Bureau's surveillance program in 1976, nearly five years prior to trial.

The second category of evidence submitted by appelles consists of materials relating to occurrences transpiring outside of the State of Ohio, in such diverse locations as New York, Georgia, and Minnesota. The incidents of harassment testified to by witnesses such as Andree Kahl-Morgan, Malik Miah, and Linda Morbacher, all Socialist Workers Party members, either transpired at party headquarters (locations which were highly publicized) or involved active individual party members who were taking part in activities such as open distribution of party literature (JA-2-5, 42-43, 75-76). Andree Kahl-Morgan testified that she had been dismissed by her employer in Georgia, but admitted that she had falsified her employment application concerning her level of previous experience (JA-41).

The final category of evidence submitted at trial by appellees involves matters which occurred within the State of Ohio. This evidence related to two general areas; allegations of harassment directed against active party members or party headquarters, and purported dismissals from employment due to party membership.

Appellees presented the testimony of John Powers, who has been a party member for 16 years, and has been a Socialist Workers Party candidate in numerous elections, including the 1980 United States Senate race in Ohio (JA-18-19). Mr. Powers testified that on two occasions during the summer of 1980 comments concerning his party affiliation were made to him by suburban Cleveland policemen while he was engaged in photographing picketing activity by striking employees at a local plant (JA-22-24). Mr. Powers also testified that he actively engaged in political discussions with coworkers at his place of employment, and had informed them of his party membership (JA-26); and that his photograph had appeared in campaign literature and newspapers during the course of his 1980 Senate campaign (JA-24-25).

Testimony was also presented concerning isolated instances of alleged harassment transpiring at Socialist Workers Party headquarters located in Cleveland and Cincinnati. Eric Schwing stated that in July of 1980 he saw two individuals in "Nazi uniforms" in an automobile outside the party's headquarters in Cleveland (JA-33-38). This occurrence transpired on a date when Mr. Powers was scheduled to deliver a previously publicized speech, which, in fact, took place without incident (JA-39; R-54). Appellees offered the testimony of Thabo Ntweng, who stated that while working at Cleveland party headquarters (which is listed in the telephone directory under the heading "Socialist Workers Party") subsequent to the 1980 Presidential election he received two disparaging telephone calls concerning Andrew Pulley, the party's 1980 Presidential candidate. Mr. Ntweng also testified that he received two other unpleasant phone calls while answering the telephones at party headquarters which were directed at the party in general. None of these calls were directed to Mr. Ntweng personally (JA-62-65). Witness Elizabeth Myers, chairwomen of the Cincinnati branch of the party, testified concerning a letter characterized as "a

piece of hate mail", which was received at party headquarters (JA-59-60). This letter was not addressed to any individual, but was directed generally to the "Socialist Workers Party" (Pl.Ex.120; JA-59; R-124). Ms. Myers also testified that the Cincinnati party headquarters is listed in the city's telephone directory, and that "several times" during the last two years she had received "threats over the telephone" while working at party headquarters. She stated that these calls had been directed to the party in general (rather than to her as an individual), and that nothing had ever been done to carry out any of the alleged threats (JA-61).

Appellees presented the testimony of several witnesses who were dismissed by their employers in Cleveland and Cincinnati. Louise Haberbush testified that she was a party member, and that she was dismissed by the Alcoa Company in Cleveland during the initial thirty day probationary period following her employment (JA-27-29). However, plaintiffs did not introduce any evidence which would establish that Ms. Haberbush was dismissed because of her party membership.

Charles R. Mitts and Ernest Abdo testified that they were party members; and that they were dismissed from employment by the Lodge and Shipley Company of Cincinnati following altercations with other employees concerning their political beliefs (JA-45-50; 53-56). Mr. Mitts stated that in connection with his party membership he had taken part in activities such as attendance at public meetings, working in the party bookstore, and distribution of leaflets. He also stated that while employed at Lodge and Shipley he had discussed his political beliefs with co-workers (JA-50-51). Mr. Abdo testified that other party members with whom he worked at Lodge and Shipley are still employed by the company (JA-56-57).

Sherri Katz testified that she is currently a member of the Socialist Workers Party, and that during her high school years and first year of college she had been a "very active" member of the Young Socialist Alliance (the party's youth group), and had attended functions such as public meetings, "educational events," and "forums" on a regular basis (JA-65-66). She also stated that she had been very active in various groups which had sponsored antiwar activities during the period of the United States' involvement in the Vietnam conflict (JA-66). Ms. Katz testified that during the summer of 1976, between her second and third year of law school, she had applied for a summer clerkship with the Office of the United States Attorney in Cincinnati, but that she had been denied employment sbsequent to a government security investigation concerning her background (JA-66-74).

Appellants introduced into evidence at trial copies of the nominating petitions (the form of which is specified in Section 3513.261, p. A-1, *infra*) filed with the Office of the Secretary of State in connection with the candidacies of appellees Herman Kirsch and Nancy Brown Lazar (Def. Ex. R and S; R-124). Each petition contained the signatures and addresses of more than five thousand supporters of the candidate. Each of the Socialist Workers Party candidates who run for office must, under the requirements of Ohio's Election Law, submit similar petitions, signed by registered voters, in order to have his or her name placed on the ballot. Under the provisions of Section 3513.262 of the Ohio Revised Code, these nominating petitions, like the financial reports of campaign committees, are open to public inspection. Appellees introduced no evidence showing any harassment in Ohio during recent years resulting from the public disclosure of the names of individuals who had signed nominating petitions of Socialists Workers Party candidates.

The question presented to this Court was first raised in the District Court by the filing of the complaint, in which it was alleged that the provisions of Sections 3517.10 and 3517.11 of the Ohio Revised Code were unconstitutional when applied to require the disclosure of names and addresses of persons who contributed to and received disbursements from Socialist Workers Party campaign committees. At all stages of this litigation appellants have denied this contention.

The District Court in its decision of June 25, 1981 (J.S. App. A-2), ruled that Sections 3517.10 (B) (4) (b), (5) (b) and 3517.11 Ohio Revised Code are unconstitutional as applied to the appellee class, and enjoined appellants from requiring members of the class to comply with the requirement of Section 3517.10 Ohio Revised Code that the full name and address of each person making a contribution to or receiving an expenditure from a Socialist Workers Party candidate's campaign committee be disclosed in public filings with the Secretary of State and county boards of election (J.S. App. A-29).

SUMMARY OF ARGUMENT

The standards governing the resolution of actions involving challenges to the application of campaign finance reporting requirements to minority political parties were set forth by this Court in the case of **Buckley v. Valeo,** 424 U.S. 1 (1976). In **Buckley** this Court held that in order to obtain exemption from reporting requirements, such as those at issue in this action, a minority party must establish that there exists ". . . a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment or reprisals from either Government officials or private parties." 424 U.S. at 74. In order to prevail in actions such as the instant one, plaintiffs must establish that such a probability exists currently within the jurisdiction in which the action is brought. Additionally, they must establish that there is a casual relationship between the disclosure require-ment from which they seek exemption, and the harassment which they claim will occur if compliance is required.

While historical evidence may be of some value in determining whether such a probability of harassment exists, the test is *prospective* in nature. Thus, the probative value of historical evidence of harassment directed toward a minority party or its members dimishes when it is dated, or is unaccompanied by evidence establishing any ongoing "pattern of threats" or harassment directed toward the organization or its members. Likewise, evidence of harassment occuring in places outside the jurisdiction in which the action is brought is of little value in determining whether there is a reasonable probability that harassment will occur as a result of compliance with the disclosure requirements at issue in a particular case.

In the instant case the District Court erroneously applied the standard set forth in **Buckley v. Valeo,**

supra. The evidence before the District Court was entirely insufficient to establish the reasonable probability that compliance with the disclosure requirements of Section 3517.10 of the Ohio Revised Code by the Socialist Workers Party's campaign committees would result in the harassment of their contributors. The District Court failed to require the party and its committees to demonstrate a causal relationship between the disclosure requirements of the Ohio Campaign Finance Reporting Act and the prospective likelihood of the harassment of contributors within Ohio. Instead, the District Court erroneously granted the appellees the injunctive relief which they sought based on very stale "historical" evidence of governmental activity relating to the Socialist Workers Party, together with a very few isolated instances of harassment directed toward the party and its members resulting from political activities other than compliance with campaign finance reporting requirements. The decision of the District Court in this matter was erroneous, and, it is submitted, should be reversed by this Court.

ARGUMENT

I.

THIS COURT HAS PREVIOUSLY DETERMINED THAT CAMPAIGN FINANCE REPORTING REQUIREMENTS MAY CONSTITUTIONALLY BE APPLIED TO MINORITY POLITICAL PARTIES. IN ORDER TO OBTAIN EXEMPTION FROM SUCH DISCLOSURE REQUIREMENTS, MINORITY PARTIES MUST ESTABLISH THE EXISTENCE OF A PROSPECTIVE REASONABLE PROBABILITY THAT COMPLIANCE WILL RESULT IN THE HARASSMENT OF CONTRIBUTORS WITHIN THE JURISDICTION IN QUESTION.

This Court has long recognized that the compelled disclosure of an individual's affiliation with a group engaged in advocacy may unconstitutionally infringe upon the freedom of association guaranteed under the First Amendment to the Constitution of the United States. **NAACP v. Alabama,** 357 U.S. 449, 462 (1958); **Pollard v. Roberts,** 283 F. Supp. 248, 258 (E.D. Ark. 1968) (three-judge court), *affirmed per curiam,* 393 U.S. 14 (1968). However, the constitutional protection afforded to the privacy of association is not absolute. **Nixon v. Administrator of General Services,** 433 U.S. 425, 467 (1977); **Communist Party v. Subversive Activities Control Board (SACB),** 367 U.S. 1, 90-91 (1961). Even significant interference with associational privacy may be upheld in situations where regulations are closely drawn to serve sufficiently important governmental interests. **Communist Party v. SACB,** 367 U.S. at 90-91; **NAACP v. Button,** 371 U.S. 415, 438 (1963).[3]

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[3]In a variety of contexts, this Court has sustained statutory requirements for disclosure of identifying information against first amendment challenges. *See, e.g.,* **Branzburg v. Hayes,** 408 U.S. 665 (1972) (newspaper reporters required to disclose identities of sources to grand jury); **Communist Party v. SACB,** 367 U.S. 1 (1961) (Communist

In **Buckley v. Valeo,** *supra,* this Court discussed the nature of the governmental interests involved in requiring campaign finance reporting and held such interests to be compelling in nature. The decision states, in relevant part:

> The strict test established by **NAACP v. Alabama** is necessary because compelled disclosure has the potential for substantially infringing the exercise of First Amendment rights. But we have acknowledged that there are governmental interests sufficiently important to outweigh the possibility of infringement, particularly when the 'free functioning of our national institutions' is involved. **Communist Party v. Subversive Activities Control Bd.,** 367 U.S. 1, 97, 81 S.Ct. 1357, 1411, 6 L.Ed. 2d 625 (1961).
>
> The governmental interests sought to be vindicated by the disclosure requirements are of this magnitude.

Buckley v. Valeo, 424 U.S. 1, 66 (1976).

The Court then described the three categories into which governmental interests in campaign finance reporting fall:

Party required to register the names of its members); **United States v. Harriss,** 347 U.S. 612 (1954) (lobbyists required to disclose names of their supporters); **Lewis Publishing Co. v. Morgan,** 229 U.S. 288 (1913) (newspapers using the mails required to publish certain information about their management and ownership); **Attorney General v. Irish Northern Aid Committee,** 346 F. Supp. 1384 (S.D.N.Y.) *aff'd.* 465 F.2d 1405 (2d. Cir.) *cert. denied,* 409 U.S. 1080 (1972) (foreign agent required to disclose names of its domestic contributors).

First, disclosure provides the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' in order to aid the voters in evaluating those who seek . . . office. It allows voters to place each candidiate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return. And, as we recognized in **Burroughs v. United States**, 290 U.S., at 548, 54 S.Ct., at 291, Congress could reasonably conclude that full disclosure during an election campaign tends 'to prevent the corrupt use of money to affect elections.' In enacting these requirements it may have been mindful of Mr. Justice Brandeis' advice:

> 'Publicity is justly commended as a as a remedy for social and industrial diseases. Sunlight is said to be the

> best of disinfectants; electric light the most efficient policeman.'
>
> Third, and not least significant, record keeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of . . .contribution limitations. . . .

Buckley v. Valeo, 424 U.S. 1, 66-69 (1976) (footnotes deleted).

After generally upholding campaign finance reporting requirements as "the least restrictive means of curbing the evils of campaign ignorance and corruption" **(Buckley,** 424 U.S. at 68) this Court went on to discuss the relationship between minority political parties and the three compelling governmental interests set forth above.[4] It was noted that the governmental interests involved in financial disclosure may be somewhat diminished in the case of minority parties or candidates because of their usually clear stands on issues and the unliklihood of their victory in an election; but recognized that significant governmental interest exists with respect to such parties because of the impact which their presence on the ballot may have upon close elections **(Buckley,** 424 U.S. at 70).

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[4]Section 3517.10 of the Ohio Revised Code does not require the reporting of the names of individuals who make contributions of twenty-five dollars or less in connection with any single social or fund-raising event. (See R.C. 3517.10(B)(4)(e) p. A-10, *infra).* A candidatemay hold any number of fund raising events during the course of a campaign. Individuals may make contributions of twenty-five dollars or less to any or all of these events without the requirement that their names be disclosed. Consequently, the provisions of the statute do not prevent supporters of the Socialist Workers Party from associating with the party and its candidates anonymously through the "symbolic act of contributing," the significance of which does not depend upon the size of the contribution. See **Buckley,** 424 U.S. at 21.

While refusing to grant minority parties a blanket exemption from financial disclosure requirements, the Court in **Buckley** established a standard under which they may obtain relief:

> We recognize that unduly strict requirements of proof could impose a heavy burden, but it does not follow that a blanket exemption for minor parties is necessary. Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties. The proof may include, for example, specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats or specific manifestations of public hostility may be sufficient.

Buckley v. Valeo, 424 U.S. 1, 74 (1976).

While this Court in **Buckley** stated that evidence of past harassment may be presented by plaintiffs in cases such as the instant one, it is submitted that the test to be applied remains one which is *prospective* in nature; and that it bears an element of geographic proximity. Plaintiffs in such actions face a burden of proof which requires them to show the "reasonable probability" that the disclosure of the names and addresses of individuals making contributions to and receiving disbursements from their campaign committees will result in threats, harassment, or reprisals being directed against these individuals. If the action is one which relates to a statute

which has application only in a particular state, plaintiffs must establish that such a situation exists at the present time within the jurisdiction in which the action is brought, not merely that it may have existed at some time in the past or that it may exist in some other area.

The test set forth by this Court in **Buckley** is an objective standard, which must be applied on the basis of current circumstances. It is not enough that some individuals may fear disclosure and decline to contribute as a result, for this sort of subjective evidence was presented and rejected in **Buckley** itself. See 424 U.S. at 71-72 n. 88. "Allegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm. . ." **Laird v. Tatum,** 408 U.S. 1, 13-14 (1972). Moreover, although evidence of harassment of a party's supporters in the past is relevent to the question of whether future harassment is likely (**Buckley,** 424 U.S. at 74), its weight is substantially diminished when it is dated, the circumstances have changed, and there is no evidence that such harassment continues. "Of course, past wrongs are evidence bearing on whether there is a real and immediate threat of repeated injury." **O'Shea v. Littleton,** 414 U.S. 488, 496 (1974). But "[p]ast exposure to illegal conduct does not in itself" justify prospective relief, "if unaccompanied by any continuing, present adverse effects." *Id.* at 495-496. Similarly, evidence of harassment from jurisdictions far removed from the one in which the action is brought has no bearing upon the question of whether financial disclosure requirements will result in a minority party's contributors facing threats or harassment.

II.

THE DISTRICT COURT IN THIS MATTER ERRONEOUSLY APPLIED THE STANDARD SET FORTH BY THIS COURT IN **BUCKLEY v. VALEO** BY FAILING TO REQUIRE THE CAMPAIGN COMMITTEES OF THE SOCIALIST WORKERS PARTY TO PROPERLY ESTABLISH THE EXISTENCE OF A PROSPECTIVE REASONABLE PROBABILITY THAT THEIR COMPLIANCE WITH THE FINANCIAL DISCLOSURE PROVISIONS OF SECTION 3517.10 OF THE OHIO REVISED CODE WOULD RESULT IN THE HARASSMENT OF THEIR CONTRIBUTORS WITHIN OHIO.

It is submitted that the District Court in this matter erred in its application of the standard set forth by this Court in **Buckley v. Valeo,** *supra,* and that the relevant evidence before the District Court was woefully insufficient to establish that the Socialist Workers Party's compliance with the disclosure requirements of Section 3517.10 of the Ohio Revised Code would result in the harassment of persons in Ohio making contributions to or receiving disbursements from its campaign committees. Much of the evidence before the District Court involved occurrences which transpired totally outside the State of Ohio, or took place ten to twenty years prior to trial. With respect to matters transpiring within the State of Ohio during recent years, appellees merely presented evidence showing a few isolated instances of harassment. The evidence disclosed one "crank" letter, and a few similar phone calls during recent years directed to the organization in general. Appellees presented testimony concerning alleged harassment prior to one previously publicized public event at the party's Cleveland headquarters. Finally, appellees submitted evidence involving isolated instances of purported minor harassment by two individual police officers during a period of labor unrest, and alleged loss or denial of employment on the part of party members during the period from 1976 to the present. It should be noted that

these occurrences involved highly vocal and publicly active party members such as John Powers, Charles Mitts, and Sherri Katz. It is submitted that evidence concerning a few isolated instances involving alleged minor harassment of the party generally, or of members who voluntarily seek and maintain a degree of public visibility concerning their controversial political views, has virtually no bearing upon the question of whether persons who merely contribute private financial support to the organization would be subjected to threats or harassment resulting from appellees' compliance with the financial disclosure provisions of Section 3517.10 of the Ohio Revised Code. Moreover, the evidence submitted involved only isolated instances of alleged harassment, and was insufficient to establish any ongoing pattern of harassment by either government officials or private parties during recent years. In sum, the extreme paucity of evidence presented by the plaintiffs in this case falls far short of the legal standard enunciated by this Court in **Buckley v. Valeo,** *supra,* and, as such, the remedy afforded plaintiffs by the Court below was totally inappropriate.

Appellants introduced into evidence before the District Court the nominating petitions filed with the Office of the Secretary of State in connection with the candidacies of appellees Herman Kirsh and Nancy Brown Lazar. Each petition contains the signatures of more than five thousand supporters of the candidate. Each of the many Socialist Workers Party candidates who run for office must, under the requirements of Ohio's Election Law, submit similar petition, signed by registered voters, in order to have his or her name placed on the ballot.[5] Section 3513.261 of the Ohio Revised Code provides that each signatory must sign a statement which

[5]The particular number of signatures required depends upon the office being sought, i.e., local offices require fewer signatures on the nominating petition than do statewide offices.

reads, "We, the undersigned, qualified electors. . .certify said person is, in our opinion, well qualified to perform the duties of the office or position to which he desires to be elected." Under the provisions of Section 3513.262 of the Ohio Revised Code, these nominating petitions, like the financial reports of campaign committees, are open to public inspection at the various County Boards of Election. Under the theory advanced by the appellees in this case, the signers of nominating petitions, who publicly declare their support for Socialist Workers Party candidates, would be subject to the same harassment as contributors identified on campaign finance reports. However, no evidence was introduced before the District Court showing harassment of individuals resulting from their signature of nominating petitions of Socialist Workers Party candidates in Ohio during recent years. In the absence of such evidence the District Court, under the standard enunciated by this Court in **Buckley,** should have concluded that contributors, like those who sign the nominating petitions of Socialist Workers Party candidates, do not face a probable threat of harassment in Ohio resulting from public disclosure of their identities.

The District Court in this case was presented with a situation virtually identical to that before another District Court in **Oregon Socialist Workers 1974 Campaign Committee, et al. v. Paulus,** 432 F. Supp. 1255 (three-judge court, D. Ore. 1977). After examining the evidence presented in the case, the Court refused to enjoin the enforcement of the Oregon disclosure requirements stating:

> . . .[W]e find by a preponderance of the evidence that there exists no 'reasonable probability' that disclosure of the names of contributors to the SWP will result in official or unofficial harassment of these contributors. Each instance of alleged harassment set out in plaintiffs' affidavits

is insufficient by itself to justify the conclusion that the valid governmental interests in disclosure are outweighed by the First Amendment rights of potential SWP supporters. A review of the evidence fails to reveal, moreover, any pattern of prior conduct, either public or private, of sufficient severity to meet the standard of proof of **Buckley.** The evidence shows, at most, a few isolated cases of the receipt of highly critical and negative telephone calls and letters. Most of these calls and letters have not been shown to be the result of SWP support as such, but are at least as likely to be the product of the other political activities of the affiants. Further, plaintiffs have made no showing of any present official investigation by either the FBI or the Portland Police Bureau.

*** *** ***

We find that the valid governmental interests recognized in **Buckley** outweigh the very minimal impact on First Amendment rights demonstrated by plaintiffs. The Court in **Buckley** noted, 'The sources of a candidate's financial support. . . alert the voter to the interests to which a candidate is most likely to be responsive. . . .' 424 U.S. at 67, 96 S.Ct. at 657. We feel that persons supporting specific parties and candidates should be willing to 'stand up and be counted'. In our democracy, the voting public is entitled to know what special interests are behind a potential office holder. The **Buckley** decision demonstrates that certain responsibilities, such as disclosure, can constitutionality be

> imposed on the exercise of First Amendment freedoms. Plaintiffs have failed to show that future disclosure of the identities of their contributors will subject these contributors to 'threats, harassment or reprisals from either Government officials or private parties'. 424 U.S. at 74, 96 S.Ct. at 661.

Oregon Socialist Workers v. Paulus, 432 F. Supp. 1255, 1259 (1977).

In contrast to the Court in **Oregon Socialist Workers' 74 Campaign Committee,** *et al.* **v. Paulus,** *supra, the* District Court in the case at bar failed to require the party and its committees to demonstrate a causal relationship between the disclosure requirements of the Ohio Campaign Finance Reporting Act and the prospective likelihood of the harassment of Socialist Workers Party members or contributors within Ohio. The District Court failed to correctly apply the standard established by this Court in **Buckley v. Valeo,** *supra,* which requires the establishment of the prospective "reasonable probability" that the campaign finance disclosure itself (as contrasted with other political activities of members or contributors) will result in the harassment of those making contributions. The District court failed to require any showing that a "pattern of threats" or harassment exists with respect to the Socialist Workers Party and its members in Ohio at the present time, or at any time in the recent past. Instead, it erroneously granted the appellees the injunctive relief which they sought based on very stale "historical" evidence of governmental activity relating to the Socialist Workers Party, together with a very few isolated instances of harassment directed toward the party and its members resulting from political activities other than compliance with campaign finance reporting requirements. Consequently, the decision of the District Court in this matter was erroneous, and, it is submitted, should be reversed by this Court.

CONCLUSION

In its consideration of this matter, the District Court incorrectly applied the standard set forth by this Court in **Buckley v. Valeo,** *supra,* by failing to require the Socialist Workers Party to properly establish that a "reasonable probability" of threats or harassment of contributors to its campaign committees would result from its compliance with the disclosure requirements of Sections 3517.10 and 3517.11 of the Ohio Revised Code. For this reason the decision of the District Court was erroneous, and, it is submitted, should be reversed by this Court.

Respectfully submitted,

WILLIAM J. BROWN
Attorney General of Ohio

THOMAS F. STAUB
Assistant Attorney General

GARY ELSON BROWN
Assistant Attorney General

State Office Tower
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 466-8600

Attorneys for Appellants

APPENDIX A

Section 3513.261 Ohio Revised Code

A nominating petition may consist of one or more separate petition papers, each of which shall be substantially in the form prescribed in this section. If the petition consists of more than one separate petition paper, the statement of candidacy of the candidate or joint candidates named need be signed by the candidate or joint candidates on only one of such separate petition papers, but the statement of candidacy so signed shall be copied on each other separate petition paper before the signatures of electors are placed thereon. Each nominating petition containing signatures of electors of more than one county shall consist of separate petition papers each of which shall contain signatures of electors of only one county; provided that petitions containing signatures of electors of more than one county shall not thereby be declared invalid. In case petitions containing signatures of electors of more than one county are filed, the board of elections shall determine the county from which the majority of the signatures came, and only signatures from this county shall be counted. Signatures from any other county shall be invalid.

All signatures on nominating petitions shall be written in ink or indelible pencil.

At the time of filing a nominating petition, the candidate designated therein, except joint candidates for governor and lieutenant governor, shall pay to the election officials with whom it is filed a fee of one half of one per cent of the annual salary of the office for which such candidate desires to be a candidate for election, but in no case shall the fee be less than one nor more than fifty dollars. At the time of filing a nominating petition, the joint candidates for the office of governor and lieute-

nant governor designated in the petition shall jointly pay to the secretary of state a fee of one hundred dollars. Such fees shall be disposed of by such election officials in the same manner as is provided in section 3513.10 of the Revised Code for the disposition of other fees, and in no case shall a filing fee be returned to a candidate.

Candidates or joint candidates whose names are written on the ballot, and who are elected, shall pay the same fee as candidates who file nominating petitions. Payment of this fee shall be a condition precedent to the granting of their certificates of election.

Each nominating petition shall contain a statement of candidacy which shall be signed by the candidate or joint candidates named therein. Such statement of candidacy shall contain a declaration made under penalty of election falsification that the candidate desires to be a candidate for the office named therein, and that he is an elector qualified to vote for the office he seeks.

The form of the nominating petition and statement of candidacy shall be substantially as follows:

STATEMENT OF CANDIDACY

I, ... (Name of candidate), the undersigned, hereby declare under penalty of election falsification that my voting residence is in ..... Precinct of the ..... (Township) or (Ward and City, or Village) in the county of ....., Ohio; that my postoffice address is ..... (Street and Number, if any, or Rural Route and Number) of the ..... (City, Village, or postoffice) of ....., Ohio; that I am a qualified elector in the precinct in which my voting residence is located. I hereby declare that I desire to be a candidate for election to the office of ..... in the ..... (State, District,

County, City, Village, Township, or School District) for the ..... (Full term or unexpired term ending .....) at the General Election to be held on the ..... day of ....., 19 .....

I further declare that I am an elector qualified to vote for the office I seek. Dated this ..... day of ....., 19 .....

_____

(Signature of candidate)

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS.

I, ..., hereby constitute the persons named below a committee to represent me:

Name Residence

_____

_____

_____

_____

_____

NOMINATING PETITION

We, the undersigned, qualified electors of the state of Ohio, whose voting residence is in the County, City, Village, Ward, Township or Precinct set opposite our names, hereby nominate ..... as a candidate for election to the office of ..... in the ..... (State, District, County, City, Village, Township, or School District) for the ..... (Full term or unexpired term ending .....) to be voted for at the general election next hereafter to be held, and certify said person is, in our opinion, well qualified to perform the duties of the office or position to which he desires to be elected.

Signature	Street Address or R.F.D.	City, Village or Township	Ward	Precinct	County	Date of Signing

....., declares under penalty of election falsification that he is a qualified elector of the state of Ohio and resides at the address appearing below his signature hereto; that he is the circulator of the foregoing petition paper containing ..... signatures; that he witnessed the affixing of every signature, that all signers were to the best of his knowledge and belief qualified to sign, and that every signature is to the best of his knowledge and belief the signature of the person whose signature it purports to be.

_____

_____

(Signature of Circulator)
(Address)

THE PENALTY FOR ELECTION FALSIFICATION IS IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR A FINE OF NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH.

The secretary of state shall prescribe a form of nominating petition for a group of candidates for the office of member of a board of education, township office, and for offices of municipal corporations of under two thousand population.

The secretary of state shall prescribe a form of statement of candidacy and nominating petition, which shall be substantially similar to the form of statement of candidacy and nominating petition set forth in this section, that will be suitable for joint candidates for the offices of governor and lieutenant governor.

If such petition nominates a candidate whose election is to be determined by the electors of a county or a district or subdivision within the county, it shall be filed with the board of such county. If the petition nominates a candidate whose election is to be determined by the voters of a subdivision located in more than one county, it shall be filed with the board of the county in which the major portion of the population of such subdivision is located.

If the petition nominates a candidate whose election is to be determined by the electors of a district comprised of more than one county but less than all of the counties of the state, it shall be filed with the board of elections of the most populous county in such district. If the petition nominates a candidate whose election is to be determined by the electors of the state at large, it shall be filed with the secretary of state.

APPENDIX B

Section 3513.262 Ohio Revised Code

The nominating petitions of all candidates required to be filed before four p.m. of the seventy-fifth day before the day of the primary election immediately preceding the general election shall be processed as follows:

If such petition is filed with the secretary of state, he shall, not later than the fifteenth day of June following the filing of such petition, transmit to each board such separate petition papers as purport to contain signatures of electors of the county of such board. If such petition is filed with the board of the most populous county of a district or of a county in which the major portion of the population of a subdivision is located, such board shall, not later than such fifteenth day of June, transmit to each board within such district such separate petition papers of the petition as purport to contain signatures of electors of the county of such board.

All petition papers so transmitted to a board and all nominating petitions filed with a board shall, under proper regulations, be open to public inspection from the fifteenth day of June until four p.m. of the thirtieth day of that month. Each board shall, not later than the next fifteenth day of July, examine and determine the sufficiency of the signatures on the petition papers transmitted to or filed with it, and the validity of the petitions filed with it, and shall return to the secretary of state all petition papers transmitted to it by him, together with its certification of its determination as to the validity or invalidity of signatures thereon, and shall return to each other board all petition papers transmitted to it by such other board, as provided in this section, together with its certification of its determination as to

the validity or invalidity of signatures thereon. All other matters affecting the validity or invalidity of such petition papers shall be determined by the secretary of state or the board with whom such petition papers were filed.

Written protests against nominating petitions may be filed by any qualified elector eligible to vote for the candidate whose nominating petition he objects to, not later than four p.m. of the thirtieth day of July. Such protests shall be filed with the election officials with whom the nominating petition was filed. Upon the filing of such protest, the election officials with whom it is filed shall promptly fix the time and place for hearing it, and shall forthwith mail notice of the filing of such protest and the time and place for hearing it to the person whose nomination is protested. They shall also forthwith mail notice of the time and place fixed for the hearing to the person who filed the protest. At the time fixed, such election officials shall hear the protest and determine the validity or invalidity of the petition. Such determination shall be final.

A protest against the nominating petition filed by joint candidates for the offices of governor and lieutenant governor shall be filed, heard, and determined in the same manner as a protest against the nominating petition of a candidate who files by himself.

APPENDIX C

Section 3517.10 Ohio Revised Code

(A) Every campaign committee, political committee, and political party which made or received a contribution or made an expenditure in connection with the nomination or election of any candidate at any election held in this state shall file, on a form prescribed under this section, a full, true, and itemized statement, made under penalty of election falsification, setting forth in detail the contributions and expenditures no later than four p.m. of the following dates:

(1) The twelfth day before the election to reflect the status of contributions and expenditures at the close of business on the twentieth day before the election;

(2) The forty-fifth day after the election to reflect the contributions received and expenditures made from the close of business on the twentieth day before the election to the close of business on the seventh day before the filing of the statement;

(3) The last business day of November of every year to reflect the contributions received and expenditures made from the close of business on the last day reflected in the previously filed statement and the close of business on the last day of October.

The statement required under division (A)(1) of this section shall not be required of any campaign committee which has received contributions or made expenditures of less than one thousand dollars at the close of business on the twentieth day before the election.

If a special election is held within sixty days before a general election, the campaign committee of a suc-

cessful candidate in the special election may file the statement required by division (A) (1) of this section for the general election instead of the statement required by division (A) (2) for the special election if the pre-general election statement reflects the status of contributions and expenditures for the period twenty days before the special election to twenty days before the general election.

If a person becomes a candidate less than twenty days before an election, his campaign committee is not required to file the statement required by division (A) (1) of this section.

No statement under division (A) (3) of this section shall be required in any year in which a campaign committee, political committee, or political party is required to file a statement under division (A) (2) of this section.

No statement under division (A) (3) of this section shall be required if the campaign committee, political committee, or political party has no outstanding obligations, no balance on hand, no contributions which it has received, and no expenditures which it has made or authorized.

No statement under division (A) (3) of this section shall be required of a continuing association which has made no contributions or expenditures since the time reflected in its report under division (A) (2) of this section.

If a campaign committee or political committee has no balance on hand and no outstanding obligations and desires to terminate itself, it shall file a statement to that effect, on a form prescribed under this section and made under penalty of election falsification, with the official with whom it files a statement under division (A) of this section after complying with other reporting requirements.

(B) Each statement required by division (A) of this section shall contain the following information:

(1) The full name and address of each campaign committee, political committee, or political party, including any chairman or treasurer thereof, filing a contribution and expenditure statement;

(2) In the case of a campaign committee, the candidates full name and address;

(3) The date of the election and whether it was or will be a general, primary, or special election;

(4) A statement of contributions made or received, which shall include:

(a) The month, day, and year of the contribution;

(b) The full name and address of each person, including any chairman or treasurer thereof if other than an individual, from whom contributions are received. The requirement of filing the full address does not apply to any statement filed by a state or local committee of a political party, to a finance committee of such committee, or to a committee recognized by a state or local committee as its fund-raising auxiliary.

(c) A description of the contribution received, if other than money;

(d) The value in dollars and cents of the contribution;

(e) All contributions and expenditures shall be itemized separately regardless of the amount except a receipt of a contribution from a person in the sum of twenty-five dollars or less at one social or fund-raising activity. An account of the total contributions from each such social or fund-raising activity shall be listed

separately, together with the expenses incurred and paid in connection with such activity. No continuing association which makes a contribution from funds which are derived solely from regular dues paid by members of the association shall be required to list the name or address of any members who paid such dues.

(5) A statement of expenditures which shall include:

(a) The month, day, and year of expenditure;

(b) The full name and address of each person to whom the expenditure was made, including any chairman or treasurer thereof if a committee, association, or group of persons;

(c) The object or purpose for which the expenditure was made;

(d) The amount of each expenditure.

(C) The statement of contributions and expenditures must be signed by the person completing the form.

The person filing the statement shall, under penalty of election falsification, include with it a list of each anonymous contribution, the circumstances under which it was received, and the reason it cannot be attributed to a specific donor.

Each statement of a campaign committee of a candidate who holds public office shall contain a designation of each contributor who is an employee in any unit or department under the candidates direct supervision and control. In a space provided in the statement the person filing the statement shall affirm that each such contribution was voluntarily made.

A campaign committee which did not receive contributions or make expenditures in connection with

the nomination or election of a candidate shall file a statement to that effect, on a form prescribed under this section and made under penalty of election falsification, on the date required in division (A) (2) of this section.

The statements shall specify the balance in the hands of the campaign committee, political committee, or political party and the disposition intended to be made thereof. The form for all statements to be filed under this section shall be prepared by the secretary of state, and furnished to the boards of elections in the several counties, and such boards shall supply printed copies of such form without charge.

Every campaign committee, political committee, or political party shall appoint a treasurer and designate his full name and address to the secretary of state or the county board of elections. The treasurer shall keep a strict account of all contributions, from whom received and the purpose for which they were disbursed. Every expenditure in excess of twenty-five dollars shall be vouched for by a receipted bill, stating the purpose of the expenditures, which shall be filed with the statement of expenditures. A cancelled check with a notation of the purpose of the expenditure is a receipted bill for purposes of this section. The secretary of state or the board of elections, as the case may be, shall issue a receipt for each such statement filed and preserve a copy of such receipt for a period of at least six years. All such statements shall be open to public inspection in the office where they are filed, and shall be carefully preserved for a period of at least six years.

APPENDIX D

Section 3517.11 Ohio Revised Code

(A) If the statement prescribed by section 3517.10 of the Revised Code relates to the nomination or election of persons whose candidacy for nomination or election was submitted to electors throughout the entire state, the statement shall be filed with the secretary of state. If the statement relates to the nomination or election of persons whose candidacy for nomination or election was submitted only to electors within a district comprised of more than one county but less than all of the counties of the state, it shall be filed with the board of elections of that county or part of a county within the district which had a population greater than that of any other county or part of a county within the district. If the statement relates to the nomination or election of persons whose candidacy for nomination or election was submitted only to electors within a county, it shall be filed with the board of such county. If a statement relates to the nomination or election of persons who were candidates for nomination or election to the office of member of the house of representatives of congress, or election to the office of member of state board of education, it shall be filed with the secretary of state. The official with whom petitions and other documents for nomination or election to public office are filed or from whom such are received shall furnish each candidate at the time of such filing or receipt a copy of Chapter 3517. of the Revised Code and such other materials as the secretary of state may require. Each candidate receiving the materials shall acknowledge their receipt in writing. The secretary of state and each board of elections shall send a copy of each statement filed with it for state-wide office, congressman, and member of the general assembly to the Ohio elections commission.

On or before the tenth day before the dates on which statements are required to be filed by section 3517.10 of the Revised Code, every candidate subject to the provisions of sections 3517.10 and 3517.11 of the Revised Code shall be notified by certified mail with return receipt requested of the requirements and applicable penalties of those sections. The secretary of state shall notify all candidates required to file such statements with his office, and the board of elections of every county shall notify all candidates required to file such statements with it.

(B) Any statement which is found to be incomplete by the officer to whom it is submitted shall be accepted on a conditional basis and the person who filed it shall be notified by certified mail as to the incomplete nature of the statement. Within four days of receipt of notice, in the case of a pre-election report, and seven days, in the case of a post-election report, the recipient shall file an addendum to the report providing the information necessary to complete the report.

The secretary of state or the board of elections shall examine all statements for compliance with sections 3517.08 to 3517.13 of the Revised Code. The examination shall be conducted by a person qualified therefor. The results of the examination shall be available to the public.

(C) In the event of a failure to file a statement or if a filed statement or any addendum to the statement, if an addendum is required to be filed, appears to disclose a violation of law, the official whose duty it is to examine the statement shall promptly report such facts to the Ohio elections commission, which shall investigate and, in the event of an apparent violation, report its findings to the appropriate prosecuting authority which shall institute such civil or criminal proceedings as are appropriate. No certificate of nomination or election shall be issued to a person, nor shall a person elected to

an office or position enter upon the performance of the duties of such office or position until he has fully complied with this section and sections 3517.08 and 3517.10 of the Revised Code.

Appellee's Brief

Supreme Court, U.S.
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ALEXANDER L. STEVAS
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CASE NO. 81-776

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

TED W. BROWN, *et al.*,
Appellants,
v.
SOCIALIST WORKERS '74 CAMPAIGN COMMITTEE (Ohio) *et al.*
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

BRIEF FOR APPELLEES

THOMAS D. BUCKLEY, JR.
Counsel of Record

GORDON J. BEGGS
American Civil Liberties Union of Cleveland Foundation
1223 West Sixth Street
Cleveland, Ohio 44113
(216) 687-2309
(216) 781-6276

BEN SHEERER
Suite 611
614 Superior Avenue West
Cleveland, Ohio 44113

BRUCE CAMPBELL
360 South Third Street
Columbus, Ohio 43215

Attorneys for Appellees

March, 1982

QUESTIONS PRESENTED

I. Whether the financial disclosure provisions of the Ohio Campaign Expense Reporting Law are unconstitutional as applied to the Socialist Workers Party (SWP), which raises amounts averaging about $15,000 for all candidates state-wide, as violative of First and Fourteenth Amendment associational privacy rights, on the basis of a record which includes proof that:

a) 7% of the Ohio SWP membership was fired because they belonged to the SWP in the one year period before trial; and

b) politically motivated assaults and batteries were committed against two of the fired SWP members, within one year of trial; and

c) Nazi threats to kill people (within one year of trial) if an Ohio SWP meeting were held were frustrated, after the Nazis appeared outside the meeting place, when the SWP called in police protection; and

d) the Ohio SWP received other threats of harm and violence, face to face, on the phone and by mail (from out of state) from local police and others, within one year of trial; and

e) at least eighteen other SWP members were fired because of their SWP politics, outside of Ohio, within one year of trial; and

f) other violent attacks on the SWP, including one shooting, occurred

in a neighboring state, within one year of trial; and

g) pervasive public and private hostility toward the SWP past and present, nationally and within Ohio, is a fact of life; and

h) the totality of the circumstances (i.e. voluminous other evidence also) establishes the "reasonable probability" that compelled disclosure in Ohio of the names and addresses of people who give money to or receive money from SWP election campaigns will subject such people to "threats, reprisals and harassment."

II. Whether the Ohio Campaign Expense Reporting Law, which is supported by markedly weaker "governmental interests" than the federal law

upheld in Buckley v. Valeo, 424 U.S. 1 (1976), but which, unlike the federal law, has no rational monetary "threshhold" for disclosure, is unconstitutional on its face.

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STATEMENT OF THE CASE

This case was instituted as a class action in 1974 to challenge the disclosure provisions of the Ohio Campaign Expense Reporting Law (Ohio Revised Code § 3517.01 et seq.) as unconstitutional (1) on their face and (2) as applied to the plaintiff class. The claim for relief arises under 42 U.S.C. 1983; district court jurisdiction was based on 28 U.S.C. 1343(3).

The Ohio Campaign Expense Reporting Law requires disclosure to the public of the identities and addresses of the financial supporters of every candidate for local, state and federal office in Ohio. [O.R.C. 3517.10 and 3517.11.] The Reporting law also requires disclosure to the public of the identity and address of everyone who receives a campaign expenditure.

The statute requires every candidate to authorize a single campaign committee to receive contributions and make expenditures. All contributions to a campaign committee and all its expenditures must be made through a campaign treasurer appointed by the candidate. The campaign treasurer, on behalf of the committee, must file pre-election and post-election sworn statements of contributions and expenditures. The filed statements must itemize separately all contributions and all expenditures, no matter how small in amount, and must list the full name and address of each contributor and each recipient of an expenditure. Statements listing the names and addresses of contributors and recipients are open to public inspection in the office where they are filed for a period of at least six years.

The Reporting law provides for two exceptions to these disclosure requirements:

(1) The name and address need not be reported of a person who contributes $25 or less if such contribution is made at a "social or fund-raising activity"; [O.R.C. 3517.10(B)(4)(e)] and

(2) If a contribution is made by a "continuing association" from dues collected from members of the continuing association, the names and addresses of the members need not be disclosed. [Id.]

There are no limitations in Ohio law on the amount of campaign contributions.

Violations of the disclosure requirements are punishable by fines, of up to $1,000 for each day of violation.

The plaintiffs are Socialist Workers Party (hereafter, "SWP") candidates for local, state and federal office in Ohio, their campaign committees and campaign treasurers, unnamed contributors and recipients of campaign funds, and the class of similarly situated persons.

The defendants are the Ohio Secretary of State and other state and local officials who administer the disclosure law.

A temporary restraining order was entered in the Northern District of Ohio. The case was then transferred to the District Court for the Southern District of Ohio where the temporary restraining order was filed again in February 1975.

By agreement the parties gave the restraining order class-wide effect pending determination of the merits. Plaintiffs have not disclosed the names

and addresses and amounts given of contributors or of recipients of funds, but have otherwise complied with the reporting requirements of the challenged statute.

The case was certified as appropriate for a three-judge panel under 28 U.S.C. 2281 and District Judges Kinneary and Duncan and Senior Circuit Judge Peck were designated as panel members.

Discovery proceeded. More than 30,000 highly excised pages of files on the SWP and its youth affiliate, the Young Socialist Alliance (often referred to hereafter as the "YSA") were eventually released to the plaintiffs from the Cleveland office of the FBI under order of the District Court.

Trial was held on February 23, 1981, the factual record being made before Judge Kinneary alone.

On June 25, 1981 the three-judge

court held that the provisions [O.R.C. 3517.10(b)(4)(b), (5)(b) and 3517.11] of the Campaign Expense Reporting Law requiring disclosure of the name and address of contributors to, and recipients of funds from campaign committees were unconstitutional as applied to the plaintiff class, and enjoined their enforcement against the plaintiffs. The class simultaneously certified by the District Court consists of: "All Socialist Worker Party candidates for Ohio state-wide or local elected political office, their campaign committees, their campaign treasurers, and the people who contribute to or receive disbursements from their campaign committees."

The Defendants' appealed, and this Court noted probable jurisdiction.

SUMMARY OF ARGUMENT

The decision below granting plaintiffs an exemption from the reporting requirements of the Ohio Campaign Expense Reporting Law should be affirmed because the law is unconstitutional as applied to the plaintiffs, and on its face.

The Ohio law requires public disclosure of the names and addresses of all election campaign contributors, and recipients of campaign funds. In Buckley v. Valeo, 424 U.S. 1 (1976), the Court upheld the public disclosure provisions of the Federal Campaign Expense Reporting Act, which it is similar to but also significantly different from the Ohio law. The Court in Buckley also held that "minor" parties could qualify for an exemption from disclosure requirements, on the basis of the contributors' and

recipients' First Amendment rights of associational privacy and political anonymity. NAACP v. Alabama, 357 U.S. 449 (1958) and Shelton v. Tucker, 364 U.S. 479 (1960) and other cases upholding those rights were adhered to, and cited as the basis for the constitutional necessity of an exemption from disclosure for minor parties which established a "reasonable probability that the compelled disclosure of a party's contributors names will subject them to threats, harassment, or reprisals from either government officials or private parties." Buckley at 74.

The three-judge court below held that the SWP was a minor party, and that plaintiffs had established a "reasonable probability" of future injury if disclosure were compelled. The court therefore held the Ohio law unconstitutional as applied to the

plaintiff class and enjoined its enforcement against them. The Court earlier had rejected plaintiff's claim that the Ohio law was unconstitutional on its face.

There is no dispute concerning the Socialist Workers Party's status as a "minor" party in the Buckley v. Valeo sense. In 1980, its Ohio senatorial candidate got only about seventy six thousand votes or 1.9% of the total. Contributions received and expenditures made in its Ohio campaign have averaged about ~~twelve~~ fifteen thousand dollars since 1974. Like the typical minor party envisioned in Buckley, the SWP's positions are ideologically arrived at, and the public knows more about where an SWP candidate stands on the issues than can be determined ordinarily from the Democrat or Republican party label.

Plaintiffs proved that disclosure of the names and addresses of contributors and recipients would be dangerous to them in the future, by establishing that twenty-two SWP members had been fired on account of their SWP politics during the one year period just preceding trial. Plaintiffs also proved politically motivated assaults and batteries committed in 1980 against two of the SWP firing victims before they were fired, a 1981 shooting incident at an SWP office, the 1980 burning of an SWP candidate's car, and the 1980 ritual burning of SWP campaign literature. Also in 1980 Nazis threatened that people would be killed if an SWP campaign rally were held and appeared outside the meeting place until police protection was called in by the plaintiffs.

Of these 1980-81 events, some occurred in Ohio and some did not.

Specifically, 7% of the Ohio SWP members, four out of the sixty, were fired during the year before trial, because they belonged to the SWP. The assaults and batteries also occurred in Ohio. The Nazis appeared at a Cleveland SWP meeting after making the threats to kill. And various other telephone and face to face threats were also made in Ohio during that year.

The shooting incident took place in Pittsburgh. The auto burning, and literature burning also took place there. Fifteen SWP members were fired in Georgia; and three in New York.

The State's position that the evidence in this case is "stale" and that incidents of harassessment in Ohio are "isolated" is simply inconsistent with the realities of the record made below.

The events did not occur in a vacuum. They are typical results of the

long standing official government hostility and widespread private antipathy toward the SWP which is also documented in the record. Much of that "historical" evidence, as the State would like to characterize it, concerns events that occurred while this case was pending in the District Court.

The court below is one of seven courts or state administrative agencies which have come to the conclusion that the SWP needs an exemption from campaign expense disclosure laws and that the constitution grants it the right to an exemption.

The Ohio law is also unconstitutional on its face. It has no "threshhold" for disclosure. Every contribution, no matter how small in amount, must be reported and disclosed to the public. The federal law upheld in Buckley had a one hundred dollar threshhold for

disclosure. Ohio law differs from federal law also in not imposing any limits on the amount that a person can contribute to an election campaign. Detection of violations of the contribution limits was one of the three "government interests" which justified First Amendment infringement in Buckley. There is thus less State interest supporting the Ohio law than there was federal interest justifying federal disclosure. At the same time, the Ohio statute is more restrictive of First Amendment rights, requiring that people making very small political contributions be identified publicly.

The State has never demonstrated any rational basis for requiring that every $5, $10, or $15 contribution be made public. In an area where precision in regulation and least restrictive means to an end are the constitutional standards,

the Ohio law, which is one of only six state laws without a threshhold, is invalid on its face.

ARGUMENT

I

APPLICATION TO THE PLAINTIFFS OF THE DISCLOSURE PROVISIONS OF THE OHIO CAMPAIGN EXPENSE REPORTING LAW INFINGES ON ASSOCIATIONAL RIGHTS PROTECTED BY THE FIRST AND FOURTEENTH AMENDMENTS.

Application to the plaintiffs of the challenged disclosure provisions of the Ohio Campaign Expense Reporting Law would reveal to the public the name and address of every person who contributed money to a Socialist Workers Party election campaign in Ohio. There would be no exceptions.

The "continuing association" loophole has the effect of allowing labor unions to make political contributions from the "regular dues" paid by members without disclosure of the names of the members themselves. It is of no practical use to the plaintiffs in this case. Even if theoretically useful, its operation would force a contributor to abandon the right not to join an association as the price of political anonymity.

The "twenty-five dollar" exemption for contributions made at a "social or fund-raising activity" would in itself require the contributor to appear in public at an SWP event, and thus abandon real anonymity.

The District Court's decision which holds these provisions unconstitutional as applied to the plaintiffs is consistent with the history of political anonymity in this country, and it is

correct under the decisions of this Court.

Political anonymity is a right that was respected by the Founding Fathers. They practiced it themselves: Hamilton, Madison and Jay published the Federalist Papers under the name "Publius." (Beard, The Enduring Federalist, vi). Chief Justice John Marshall issued anonymous defenses of the work of the Supreme Court. (Beveridge, The Life of Marshall 313-19). "Between 1789 and 1809 no fewer than six presidents, 15 cabinet members, 20 senators, and 34 congressmen published political writings, either unsigned or under pen names." (Comment, The Constitutional Right to Anonymity: Free Speech, Disclosure and the Devil, 70 Yale L.J. 1084)

We take the secret ballot for granted, but public voting either by a show of hands or by voice vote was once

the predominant American method for choosing elected officials. "Its deficiencies were that it invited intimidation, reprisals and retaliation against persons for the way they voted." [Neuborne & Eisenberg, The Rights of Candidates and Voters, page 50, 1980]. As a consequence, by the middle of the 19th century, most states had adopted the written ballot. And by the turn of the century a majority of states had adopted the further reform of the truly secret "Australian" ballot which was prepared by election officials and carried the names of all the candidates. [Id. at 51]. "[O]ne of the great political reforms was the advent of the secret ballot as a universal practice." Buckley v. Valeo, 424 U.S. 1, at 237 (Burger, C.J. separate opinion).

Our traditional respect for political privacy and the nation's experience of

its practical value are reflected in the cases and in the literature. "Anonymity has long been recognized as absolutely essential for the survival of dissident movements; the glare of public disclosure, so healthy in other settings, may operate in the context of protected but unpopular groups or beliefs as a clarion call to ostracism or worse. " [Tribe, American Constitutional Law 707].

The decisions of this Court which bear on associational privacy, political anonymity, and the regulation of the electoral process are all in point and support the District Court's conclusion that the Ohio disclosure law as applied to the plaintiffs is unconstitutional. The leading cases are NAACP v. Alabama, 357 U.S. 449 (1958), and Bates v. Little Rock, 361 U.S. 516 (1960), which upheld the right of the NAACP to maintain the confidentiality of its membership lists

in the face of official demands for disclosure. The Court reasoned that compelled disclosure would enfringe the members' freedom of association and that the State and city had not demonstrated a governmental interest in disclosure sufficient to justify deterrence of the exercise of a protected right. In both cases there was uncontroverted evidence that disclosure of members' identities had in the past led to harassment and reprisal.

Talley v. California, 362 U.S. 60 (1960), upheld the right to distribute handbills and leaflets anonymously. Shelton v. Tucker, 364 U.S. 479 (1960), struck down a state statute which required school teachers, as a condition of employment, to disclose every organization they had belonged to during the previous five years. In Talley, the court noted that:

> "Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all. * * * It is plain that anonymity has sometimes been assumed for the most constructive purposes." 362 U.S. at 64-65.

The right to maintain the confidentiality of NAACP lists was upheld again in Gremillion v. NAACP, 366 U.S. 293 (1961) and Gibson v. Florida Legislative Investigating Committee, 372 U.S. 539 (1963). Similarly, the right of applicants for admission to the bar to remain silent concerning organizational membership was upheld in Baird v. Arizona, 401 U.S. 1(1971), and In Re Stolar 401 U.S. 23 (1971).

In Pollard v. Roberts, 283 F. Supp.. 248 (D. Ark. 1968), aff'd 393 U.S. 14 (1968) the same principles were applied

to prevent compelled disclosure of the records of contributors to the Republican party in Arkansas. The three judge court observed that:

> "Disclosure or threat of disclosure well may tend to discourage both memebership and contributions thus producing financial and political injury to the party affected. * * * For various reasons, individual fear of reprisal or harassment, the possibility of disclosure of their party affiliations and contributions, if any, tends to inhibit citizens from exercising their right to participate meaningfully in American political life." 283 F. Supp. at 258.

The cases in this Court dealing with American political life also support the minor party interest at stake here. In Sweezy v, New Hampshire, 354 U.S. 234 (1957), the Court upheld the right of a member of the Progressive Party to remain silent about the party and its members, when questioned by a state legislative investigating committee. The Court said:

> "Our form of government is built on the premise that every citizen shall have the right to engage in politi cal expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the medium of political associations. Any interference with the freedom of a party is simultane eously an interference with the freedom of its adherants. All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society." 354 U.S. at 250-51.

The rights of minor parties and their supporters have also been vindicated in the decisions of this Court which deal directly with the electoral process. State laws regulating ballot access must pass a strict scrutiny test. Statutes

which freeze the two-party status quo and keep minor parties off the ballot have been stuck down. Williams v. Rhodes, 393 U.S. 23 (1968); Storer v. Brown, 415 U.S. 724 (1974); Illinois Election Board v. SWP, 440 U.S. 173 (1979). Such cases raise the question of "how to accommodate the desire for increased ballot access with the imperative of protecting the integrity of the electoral system from the recognized dangers of ballots listing so many candidates as to undermine the process of giving expression to the will of the majority." Lubin v. Panish, 415 U.S. 709 (1974), at 714. The answer has never been to impose requirements for meaningful access to the electoral process which were too difficult to be achieved. Jenness v. Fortson, 403 U.S. 431 (1971). Special treatment for minor parties has been the rule. In Jenness, the court upheld the Georgia ballot

access law (as applied to the SWP) precisely because it was tailored for the special needs of small parties, saying:

> "Georgia has not been guilty of invidious discrimination in recognizing these differences [between major and minor parties] and providing different routes to the printed ballot. Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike, a truism well illustrated in Williams v. Rhodes, supra." 403 U.S. at 441-42.

The freedom of association and political anonymity cases, and the election regulation cases intersected in Buckley v. Valeo 424 U.S. 1 (1976), which considered the disclosure provisions of the Federal Campaign Expense Act, a statute which unlike Ohio's law compelled public disclosure only of contributions in excess of $100. Since Buckley, the federal statute has been amended and the threshold for disclosure is now $200.

The Court in Buckley recognized that the application of campaign finance disclosure provisions to minor parties raised special First Amendment problems:

> "We are not unmindful that the damage done by disclosure to the associational interests of the minor parties and their members and to supporters of independents could be significant. These movements are less likely to have a sound financial base and thus are far more vulnerable to falloffs in contributions. In some instances fears of reprisals may deter contributions to the point where the movement cannot survive." Buckley at 71.

It was argued in Buckley, in the light of such considerations, that a blanket exemption for all minor parties was required "because the 'evils' of 'chill and harassment ... are largely incapable of formal proof'". The court held that a blanket exemption was not required. But

it did so only because of its formulation of a constitutional standard for case by case minor party exemption which took the problem of proof into consideration. The court said:

> "We recognize that unduly strict requirements of proof could impose a heavy burden, but it does not follow that a blanket exemption for minor parties is necessary. Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment or reprisals from either Government officials or private parties. The proof may include, for example, specific evidence of past or present harassment of members due to their associational ties, or of harassment directed at the organization itself. A pattern of threats or specific manifestation of public hostility may be sufficient."
>
> * * * * *
>
> Where it exists the type of chill and harassment identified in Alabama can be shown. We cannot assume that courts will

> be insensitive to similar showings when made in future cases. We therefore conclude that a blanket exemption is not required. 424 U.S. at 74.

Of the cases cited by the State in defense of the application to the plaintiffs of the Ohio disclosure law, only one was decided since Buckley: Nixon v. Administrator of General Services, 433 U.S. 425 (1977). Rather than supporting the statute, it reemphasizes the dangers to privacy rights posed by public disclosure of confidential information. The Court upheld the GSA's archival screening methods as applied to Richard Nixon's White House papers, but observed that "the extent of any . . . [First Amendment] burden, however, is speculative in light of the Act's terms protecting appellants from improper public disclosure and guaranteeing him full judicial review before any public

access is permitted." 433 U.S. at 467. What saved the federal act, even as applied to information of enormous importance and great public interest, was the fact that it would not be disclosed to the public.

II

PLAINTIFFS MET THE BUCKLEY V. VALEO STANDARD OF PROOF

The constitutional standard for minor party exemption from an otherwise valid election disclosure law is the one stated in Buckley: evidence showing "a reasonable probability" that the compelled disclosure of the party's contributors' names will subject them to threats, reprisals and harassment.

For the Socialist Workers Party, the minor party in this case, that standard was not hard to meet. The factual record is reviewed here under the headings: A) The SWP is a Minor Party; B) There is

General Public and Private Hostility To the SWP, Its Members and Supporters; C) There are Innumerable Proven Examples of Threats, Reprisals and Harassment Directed at the SWP and its Supporters; and D) Disclosure Would Deter Contributions to SWP Campaigns.

A. The SWP is a Minor Party.

The Socialist Workers Party is a "minor party" in the sense that term was used in Buckley v. Valeo. There are about 60 SWP members in Ohio. The SWP's constitution states that the party's purpose is "to educate and organize the working class for the abolition of capitalism and the establishment of a workers' government to achieve socialism." [JS A-13.] (The District Court noted the "uncontroverted testimony that the SWP does not seek violent confrontation with the police and does not advocate taking arms against the

government. Instead, it seeks to win over the masses to revolution through ... political methods....") [Id.] The SWP candidate for U.S. Senate from Ohio in 1980 received a little over 76,000 votes less than 1.9% of the total. [J.A.-20] The SWP has little chance of winning an election. Political positions adopted by the SWP's national organization are binding on its local candidates. [JS A-13]. Its "definite" and "publicized viewpoints" can be discerned by the public from the parties' ideological position. The SWP's financial base is also typical of the minor party described in Buckley v. Valeo. Total contributions made to the SWP candidates in Ohio were $12,118 in 1974, $21,929 in 1976, and $11,912 in 1978. [Exh C, D, E, F, G, H, I, M, O, P and Q.]

B. There is General Public and Private Hostility to the SWP, Its Members and Supporters.

Public and private hostility toward the SWP has been common for decades. (Indeed the record of federal hostility and federal harassment is so overwhelming that to trace its outlines here, as we must, is apt to give the same false impression the government has tried over the years to give to the public: that the SWP is some kind of criminal conspiracy set upon subverting out institutions by illegal means. In fact the SWP's only crime has been to be unpopular. The history of federal government-SWP interaction is before the court in Socialist Workers Party v. Attorney General (No. 73 Civ. 3160 S.D. N.Y.) In that case, the trial judge "asked the Government to come forward with any indication whatever of violent

revolutionary activity or any other illegal activity carried out by the YSA or SWP, and the Government [came] forward with absolutely nothing." 387 F. Supp. 747, at 752 (1974) vacated in part on other grounds, 510 F.2d 253 (2d Cir. 1974), aff'd, 419 U.S. 1314 (1974) (Marshall, J.)

The government's official anti-SWP policy is a matter of public record. For example, members and supporters have been barred from government employment, Gordon v. Blount, 336 F. Supp. 1271 (D. D.C. 1971); subjected to deportation proceedings, Scythes v. Webb, 307 F.2d 905 (7th Cir. 1962); and given undesirable military discharges, Stapp v. Resor, 314 F. Supp. 475 (S.D. N.Y. 1970).

The trial record establishes that the federal government's anti-SWP policy was executed by at least nine agencies:

Federal Bureau of Investigation; United States Secret Service; Immigration and Naturalization Service; Civil Service Commission; United States Navy; Army Intelligence; Navy Intelligence; Air Force Intelligence; General Accounting Office; Internal Revenue Service. [JA 96; and Exh. 2, 4, 6, 11, 12, 15, 18, 19, 20, 22, 26, 28, 32, 34, 35, 37, 38, 50, 51, 52, 56, 62, 65, 66, 70, 72, 78, 80, 83 and 102] More are being added. The Court can take judicial notice of Executive Order 12333, issued after trial on December 4, 1981. [46 Fed. Reg. 59941, Dec. 8, 1981] Executive Order 12333 for the first time authorizes the Central Intelligence Agency to conduct covert oeprations in the United States, and to assist and cooperate with local American law enforcement authorities. [E.O. 12333 Part 1.4(D); Part 2.6(D); Part 3.4(H)] As long ago as 1972, the FBI regarded the

SWP and its youth affiliate, the Young Socialist Alliance, as "Trotskyite" groups and as the "largest and probably the best organized revolutionary organizations in the U.S." [Exh. 85]. Since there is no reason to believe that that federal assessment has ever been revised, the SWP is obviously a prime target for the CIA under its new mandate for domestic activity.

In the past there have been similar shifts in the federal plan for the SWP. Over the years, the techniques employed and the role of particular federal agencies have varied from time to time. In 1976, under enormous post-Watergate pressure, and after the exposure of its notorious COINTELPRO operation, the FBI announced that the "internal security" aspect of its investigation of the SWP was at an end. There is also some evidence that in the past the Civil

Service Commission stopped its anti-SWP activity. [Exh 129, Finding of Fact 215] But there is no record evidence, and no information outside the record, that other agencies such as Military Intelligence and the Secret Service have ever stopped their SWP investigations. On the contrary, what has been consistent about federal policy toward the SWP over the years is the zeal with which the government has pursued its anti-SWP goals despite what may appear to the public to be changes. Thus, in 1974, when the Attorney General's list was abolished, the FBI's "predicate" for investigating the SWP and YSA disappeared. The agency, however, never veered from course, merely wrote a new boiler- plate predicate and continued the investigation unchanged. [Exh.103 and 42] Even when agencies may have ended their formal investigations, the bureaucratic hostility built into the

system causes the old policies to be self-executing in the present. Thus, in 1978, the FBI in Cleveland responded to a routine "name-check" request from the Civil Service Commission by identifying the subject of the name-check as having two brothers who had been the "subject of internal security type investigations by the Cleveland office of the FBI." [JA 94-95] The FBI meant SWP or YSA investigations, but did not name the organizations as such. (The letter was put in an FBI file dealing with the "Socialist Activist Educational Conference Sponsored by the Socialist Workers Party (SWP) and the Young Socialist Alliance (YSA) Oberlin, Ohio, 8/17-24/74.")

The degree of federal hostility is reflected in the magnitude of its efforts. The District Court found that:

> "FBI surveillance of the SWP was massive. The

> Government possesses about 8,000,000 documents relating to the SWP, the YSA (the SWP's youth organization) and their members." [JS A-14]

Surveillance methods included the use of member informants, "surreptitious entries", recruitment of citizens to monitor SWP activities, direct electronic surveillance, and a mail cover. [JA 99-101]

The FBI used approximately 1300 informants in its part of the SWP investigation. Three hundred of these informants were SWP or YSA members. Of the 300 member informants, approximately 21 held local branch offices within the party. Three such informants even ran for elected office as SWP candidates. Member informants infiltrated the SWP branches in Cleveland and Cincinnati. Eighteen typical informants were paid $358,648.38 for their services and expenses. [JA 99-105; JS A-15, 16]

While implacable hostility toward the SWP is obvious from the magnitude of the FBI's surveillance operation, surveillance was only a part of the total federal approach to the SWP and its supporters: "Threats, reprisals and harassment" were official policy. For a while, between 1961 and 1971, that policy was formally labeled the FBI's "SWP-Disruption Program." [JA 98] It was undertaken as part of the FBI's well known "COINTELPRO" operation.

The government's purpose in establishing the SWP-Disruption program was to impair the functioning of both the SWP and the YSA. The FBI drafted anonymous letters, which it sent to members and supporters, and which were calculated to demoralize the recipients and sow dissention within the organizations. [Id.] The plans for an elaborate "dirty trick" are set out in

Exhibit 106, the internal FBI correspondence describing the government's success at suppressing First Amendment political speech by the SWP at a school teachers conference in Cleveland. At least forty-six separate COINTELPRO activities were approved and implemented against the SWP. [Exh. 122, p.12] (The SWP-Disruption Program documents were ordered "classified" in 1975. [Exh. 43,44, 105].)

But it is hard to draw the line between the "Disruption Program" activity as such, and routine FBI operations. The "surreptitious entries" were not part of the formal program to disrupt; but materials stolen from SWP offices wound up in the possession of both the FBI and the Civil Service Commission. [Exh. 129, Finding of Fact 167.] In the course of discovery in this case the FBI itself conceded that at least two documents in

its Cleveland files (but not part of the SWP-Disruption Program File) "arguably constituted evidence of harassment of the SWP." (FBI Memorandum, February 12, 1980) A more objective reader of the files would conclude that countless other episodes constituted harassment. They are summarized below.

Private hostility to the SWP is also common. Sometimes it leads to economic injury or physical violence. Episodes of that nature, in which the harmful results of the hostility are a matter of record, are also set out below under the "Proven Examples" heading. In addition, there is proof in the record of an underlying attitude or pattern of widespread hostility among members of the public. Some evidence of this is found in the testimony of SWP witnesses who described gratuitous threats and profanity from a police officer on account of SWP

membership [JA 22-23], a threatened phone tap and the burning of SWP campaign literature [JA 77-79]. Better evidence of the public's attitude is found in the network of private contacts the FBI was able to recruit to monitor SWP activity. Such contacts were developed at no less than twenty-one colleges and universities in the area of the Cleveland FBI office, who reported on YSA activity (or inactivity) on their campuses. [Exh. 94] There were also contacts, in Cleveland, at the Cleveland Transit System [Exh. 45], Greyhound Bus Lines [Exh. 72], and Trans World Airlines.[Exh. 47 and 48] In addition, there were regular contacts at four Cleveland banks. [Exh. 2, 4, 10, 11, 12, 15, 17, 18, 22, 24, 25, 26, 28, 33, 35, 59, 61, 62, 74, 76, 77, 112, and 113].

Public cooperation in its work was important to the FBI because of its

particular interests in SWP finances, and the identification of SWP members and supporters. In Cleveland seven sets of files on SWP finances were maintained, including one entitled "Socialist Worker Campaign (Funds)" [Exh. 108] and another entitled "Ohio Socialist Campaign Committee (Funds)". [Id.] Those two files demonstrate FBI interest in precisely the information which plaintiffs are trying to keep confidential in this case. The FBI's Manual of Instructions directed all field offices to uncover the sources of SWP funds and the nature of their expenditures. [JS A-14] A 1973 general order to field offices demanded detailed accounts of SWP funds: "merely reporting monthly branch balances ... was wholly unsatisfactory and ... not ... accepted in future field reports." [Exh. 31 and 79] The Cleveland field office utilized

its informants at local banks to routinely record all activity in the SWP checking account, including the names of payees on SWP checks. A large financial contribution would be brought to the attention of FBI headquarters. [Exh. 40]

As for members, the FBI director explained to the field offices why it was "imperative" to identify all of them: "It is conceivable that some of these present or former members of YSA and SWP may eventually apply for positions in government or key private industries." [Exh. 31 and 79]

C. There Are Innumerable Proven Examples of Threats, Reprisals and Harassment Directed At the SWP and Its Supporters

Plaintiffs proved that twenty-two SWP members were fired in the 12 month period before trial on account of their SWP membership. The State apparently does not contest the fact that twenty of these

firings (all of those outside of Ohio and two in Ohio) were on account of SWP membership. Its only suggestion to the contrary is reference to the fact that one fired SWP member from Georgia testified that she had exaggerated her work experience on her job application. She was one of 15 SWP members fired at the same time from the same Lockheed plant, and the political motivation is obvious. [JA 42]

Other concededly political firings occured in 1980, within four months of the trial of this case when the federal government caused three SWP members in Brooklyn, New York to lose their jobs on account of their "political activities." [JA 6-16] The three worked at the Brooklyn Navy Yard, as civilians, for a civilian employer. Their political activities consisted of holding political discussions "before work" and "during

breaks" with co-workers, and trying to interest co-workers in SWP literature.The responsible Navy officer regarded the literature as "potentially treasonous." The workers were reinstated after the intervention of private counsel for the civilian employer.

The State does deny, however, that two of the four Ohio firings that occurred in the year before trial were political. With respect to two SWP members fired at Alcoa, near Cleveland, Appellant's Brief states at page 9 "plaintiffs did not introduce any evidence which would establish ... [the two SWP members were] dismissed because of ... party membership." That is not correct. The evidence, while circumstantial, compels the conclusion that they were fired because they belonged to the SWP. [JA 26-33, R. 25-43] The members, Louise Haberbush and

Kathy Fitzgerald were fired on the last day of a 30 day probation period during which the company could dismiss them without cause, under the union labor agreement. They were given no explanation for the dismissals. Their foremen evaluated their job performances as virtually flawless. An Alcoa labor relations specialist testified that their personnel files did not reveal any work-related reason for their discharge. [JA 30-31] Neither worker had talked or acted politically with co-workers while at Alcoa. They worked separate shifts, in separate buildings, and took meals and breaks separately. Yet the discharges were related to each other: a single set of notes made by a supervisor regarding the terminations referred to both women. [Exh. 130, p.13] Most significantly the notes revealed that the decision to dismiss these two individuals, who were

employed in blue-collar "forging chipper" positions, required consultations with the following Alcoa executives: General Manager, Forging Division; Manager, Corporate Staff, Industrial Relations Department; a Security Department Member; a Production Supervisor; a Shift Supervisor; and a Public Relations Assistant. In addition, the Chief of Police of Newburg Heights, Ohio where the plant is located, was also involved in the process leading to the firings. Four of these Alcoa executives including the Manager, Corporate Staff, and the Security Department member work at Alcoa's Corporate Headquarters in Pittsburg, and were consulted on the phone by the Labor Relations supervisor in Cleveland. [JA 31-33]

The only plausible explanation for all of this is that Alcoa somehow found out that Haberbush and Fitzgerald were

SWP members, and fired them for that reason.

The State concedes that the two other Ohio SWP members were fired for political reasons within one year of trial. One of them is a named plaintiff in this case, a former SWP candidate for Congress. He and another SWP member lost their jobs at the same plant after they were attacked, physically and verbally, by a fellow worker named Bryant who was the union shop steward. Bryant told Mitts (the plaintiff) that he knew he "was a communist and that if [he] started spreading communist crap in the plant, they would find [him] dead in the parking lot." [JA 46] Repeated threats followed. Mitts' locker was ransacked, and his clothing slashed. [JA 47] He was hit with "grinder slurry" thrown at him by Bryant. Grinder slurry is a "combination of coolant and grinding

wheel and metal that ... packs real tightly." [Id.] He was constantly told that the steward would "take care" of him and "kill" him. [JA 48] Abdo, the other SWP member who worked with Mitts, was also threatened before being fired. [JA 53] The two SWP members reported the political harassment to management. Management's reaction was to fire them both and retain their antagonist.

Bryant's threat to kill may sound like hyperbole. But other recent incidents show that threats against the SWP and its members must be taken at face value. In 1980, the Cleveland SWP office received a phone call threatening that if a scheduled campaign rally were held, "people would be there with guns and people would be killed." [R. 57] The caller identified himself as a member of the American Nazi party. On the day of the rally, people dressed in Nazi

regalia, wearing the swastika armband, appeared several times outside the meeting place. [JA 33-38]. The SWP had notified the police who provided protection and the event took place peacefully. However, in Pittsburgh, in January 1981, when no police were present, the SWP office was fired on and hit with two bullets in the evening after a publicized speaking event. [JA 43] Earlier in 1980, the letters "KKK" had been scrawled on the Pittsburgh office windows and elsewhere in the vicinity of the SWP office. [JA 80-81]. And a car belonging to the SWP's Pennsylvania senatorial candidate was set on fire while she was at work in 1980. [Id.].

Other threatening phone calls were received at the SWP's office in Cleveland in the fall of 1980. [JA 62-65].

In Chicago, in 1978, the SWP offices were entered and set on fire during the

night. [JA 3-4] Pictures of the Chicago wreckage are attached as exhibits to the Miah depostion in the record. A hate letter received at the SWP's Cincinnati office in 1980 was postmarked Chicago. [Exh. 120]. Other violent attacks on SWP offices, and SWP members, have also occurred in the past. The Los Angeles SWP office was bombed in 1975. In 1970, the same office was entered by armed men who ordered the occupants to lie down and then spread gasoline and set the place afire. In Los Angeles, a member's apartment, the intended site for an SWP party, was bombed in 1969. The Los Angeles office was bombed twice in 1968. [Exh. 129, Findings of fact 201, 201, 202 and 204]. In San Diego bullets were shot through the SWP office windows in 1970. [Exh. 129, Finding of fact 205].

Identification as a SWP member or supporter is dangerous in other ways as

well. In 1976, the trial witness Sherri Katz was denied federal employment on account of her SWP political activities. In high school and for a while in college she had belonged to the YSA and to the Student Mobilization Committee (SMC) against the war in Vietnam. The FBI regarded the SMC as an SWP front. [Exh. 118] The FBI had accumulated a 17-page file on Ms. Katz by the time she was 17 years old; it grew as she got older. [Exh. 115,116,117,118 and 133]. In law school Ms. Katz applied for a job as a summer legal clerk in the U.S. Attorney's Office for the Southern District of Ohio. The job was offered to her in writing and then withdrawn without explanation after she submitted the federal form for a security check. [JA 65-75]

There are other specific examples in the record of federal harassment of SWP

members, and of others who were not members but were suspected of having some connection with the organization. Thus, a briefcase belonging to the SWP's presidential candidate was stolen from his car and later discovered in the possession of the FBI. [Exh. 129, Finding of Fact 169] Friends and neighbors of SWP members were intimidated. [Exh. 129, Finding of Fact 95.] Landlords were warned about the dangers of the SWP. [Exh. 129, Findings of Fact 126, 172 and 173].

In 1973 two FBI agents visited an individual who was not a member of the SWP but who had displayed a poster for the SWP presidential candidate and signed a leaflet urging people to vote either for the SWP candidate or another person. The agents confronted the individual with proof that he had contributed $10.00 to the 1972 Socialist Workers campaign

fund. The agents told the individual that they knew where he was employed and they warned him to disassociate himself from the SWP and said that they would keep an eye on him in the future. [Exh. 120, Finding of Fact 15]. The Government Accounting Office, where federal election law disclosure reports used to be filed, harassed at least one contributor to an SWP election campaign. [Exh. 129, Finding of Fact 195.]

The record is filled with evidence of government harassment of people connected with the SWP and of government attempts to interfere with SWP campaign activities. [Exh. 129, Findings of Fact 129, 167, 170, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 222 and 223] This sampling of episodes is the tip of an iceberg whose real dimensions can be measured by reference to the FBI's systematic treatment of everybody

connected with the SWP or YSA. All members were listed on the FBI's "Security Index." [Exh 21,69]. People on the Security Index were scheduled to be arrested and held without charge in case of a "national emergency" [Final Report of the Select Committee to Study Governmental Relations With Respect to Intelligence Activities, U.S. Senate, 94th Cong., 2d Sess., Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans, Book III, "The Development of FBI Domestic Intelligence Investigations," pages 420-21].

As noted above, the FBI's other long-range objective in identifying members was to prevent their employment or get them fired. But the immediate consequence of inclusion in the Security Index was an "investigation." Investigation meant that an FBI agent,

identifying himself as such, would visit and question the subject's employers, teachers and sources of credit. [Exh. 65 and 98].

Not only "members" were "investigated". [The FBI files on the SWP and YSA from the Cleveland field office which were released to the plaintiffs were heavily excised. When the FBI deleted the name of a person who has been the subject of an investigation the symbol "D" was placed alongside the deletion. See FBI Reply to Plaintiff's Renewal of Motion For Production of Documents Under Rule 45(d)(1), F.R. Civ. P., November 19, 1980, pages 2 and 3, ". . . the names of persons who were the subjects of investigation by the FBI (marked "D") were deleted . . . " * * * " * * * persons protected by Code "D" who were the subjects of FBI investigations".] The consequence of

expressing support for the SWP election ticket was investigation. [Exh. 36] Having a subscription to the SWP's newspaper, The Militant, meant that the subscriber was "indexed", and therefore investigated. [Exh. 86] Forty to fifty people who merely expressed some interest in the YSA on a college campus were investigated. [Exh. 27]. When the Cleveland Police department photographed marchers in a peaceful SWP political demonstration, and turned over the photos to the FBI, investigations followed. [Exh. 41] Scores of people, SWP members or not, who attended an SWP conference at Oberlin in 1973 were investigated. [Exh. 51] Investigations were conducted in connection with the FBI response to a request for information about the YSA from the Lieutenant Governor of Ohio. [Exh. 64] The FBI investigated someone denounced as connected to the SWP in a

phone call from a self-described right winger opposed to Blacks and Jews. [Exh. 67] When the YSA held its national convention in Houston in 1971 and 1972, the FBI contacted three hotels and received copies of the guests' registration cards. Nine people from Cleveland indicated affiliation with the YSA on the cards. Five others did not. The FBI investigated all fourteen of the Clevelanders because they were "believed to be connected with the YSA due to the fact that they were from out of town and registered for the period of time during which the convention was held". [Exh. 81].

At least a dozen people who joined an SWP picket line against Spiro Agnew were also investigated. [Exh. 82]

A high school girl who wrote a letter that was misdirected to the SWP's New York office was investigated. Paton v. LaPrade. 524 F.2d 862 (3rd Cir. 1975).

The payees of SWP checks were routinely investigated. [Exh. 10,76]

The inescable conclusion is that a person would be investigated on account of any connection with the SWP or YSA, whether that connection was direct or extremely attenuated and the investigation would entail FBI visits to employers and others.

Subjection to overt private harassment, to the dangers of physical violence and to both overt and covert public reprisal and harassment are facts of life for people who support the SWP.

D. Disclosure Would Deter Contributions to SWP Campaigns.

There is direct evidence that people have been deterred from contributing to SWP Political campaigns because of fear of disclosure and the harmful consequences of disclosure. (Exh. 129, Findings of Fact 305, 306, 307, 308, 310,

311, 313, 315, 318, 319, 321, 322, 324, 327 and 328.) Other people have contributed less than they would have in order to escape application to them of the (then) $100 and above federal disclosure provision. (Id., Findings of Fact 309 and 312.)

There is also opinion evidence, based on longtime SWP membership, that disclosure of contributors names would lead to threats, reprisals and harassment. [JA 11-12; Miah Deposition, p.18-19]

III.

THE DISTRICT COURT REACHED THE CORRECT RESULT IN APPLYING THE LAW TO THE PROVEN FACTS IN THIS CASE.

A. Other Federal Courts And State Administrative Agencies Have Also Granted Exemption From Disclosure To The SWP

The three-judge court's reading of the evidence summarized above was correct. And it is in accord with decisions reached by courts and administrative agencies in Illinois, Minnesota, Wisconsin, California, and Washington which have also granted exemptions from similar disclosure laws to the Socialist Workers Party. 1980 Illinois Socialist Workers Campaign v. State of Illinois Board of Elections (D.C. N.D. Ill. No. 81 C 1919, November 30, 1981); Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F. Supp. 540 (1977) (three-judge court); In Re Manual (No. AE 77,005 California Fair Political Practices Commission, March 1977); In the Matter of the Application of the 1977 Seattle Socialist Workers Campaign for a Reporting Modification, P.D.C. No. 696 (Public Disclosure Commission, February 21, 1978); Socialist

Workers 1974 Washington State Campaign v. Washington Public Disclosure Commission (Wash. Sup. Ct. Nos. 52,505, 54,772, 1977); In the Matter of Minnesota Socialist Workers 1974 Campaign Committee Request for Exemption (Minn, State Ethics Comm., No. H-0001 October 1974). See SWP 1974 National Campaign Committee v. Federal Election Commission (D.D.C. No. 74-1338 January 3, 1979). (consent decree). See also Doe v. Martin 404 F.Supp. 753 (D.D.C. 1975).

There is one case to the contrary, Oregon Socialist Workers 74 Campaign Committee v. Paulus, 432 F. Supp. 1255 (1977) (three-judge court). The Oregon case is wrong on the facts, and on the law. It is wrong on the facts because the two judge majority somehow did not find as a fact that the SWP had ever been the subject of FBI or other federal surveillance or harassment. (432 F.

Supp., at 1259, footnote 1). This startling judicial myopia might itself account for the aberational decision reached in the Oregon case. But the two judge majority also betrayed misunderstanding of the fundamental First Amendment principles involved. Appellants rely heavily on the reasoning of that case, quoting it extensively in their Brief at pages 22-24, but a short passage is worth repeating here as well:

> "We feel that persons supporting specific parties and candidates should be willing to 'stand up and be counted'."

The slogan that "people should stand up and be counted" is at odds with every single decision of this Court upholding the right of associational privacy, and totally inconsistent with the measured approach of Buckley v. Valeo to the application of election disclosure laws to unpopular minor parties. The dissent

in the Oregon case did recognize what was at stake:

> "We must preserve the rights of splinter parties to participate in the political process. '. . . [W]e should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death . . .' Abrams v. United States, 250 U.S. 616, 630, 40 S.Ct. 17, 22, 63 L.Ed. 1172 (1919) (Holmes, J., dissent). The alternative will force minor parties underground and create a significantly greater risk to our democratic society."

B. The Evidence Establishes That Public Identification With The SWP Is Dangerous.

The District Court here, in deciding that the events and attitudes proven are "'a chilling reminder to those who might support this unpopular cause in the future'", and that there is a "reasonable probability" that disclosure would subject contributors to "threats, reprisals and harassment", rejected

certain misleading analyses of the evidence urged by the State and which the State presses again here. The first such contention is the argument that there is a missing link in the evidence because the evidence of proved harassment is not connected to the victims' "compliance with Campaign Finance Reporting requirements." [App. Br. 13] This theme underlies the emphasis in the State's Brief given to the fact that SWP office phone numbers are listed in the phone book, that SWP campaign rallies are given publicity, that an SWP candidate's picture has been in the newspaper, or that a person was a "very active" YSA member. It is for those reasons, the State says, that SWP offices were stalked by Nazis, or people lost jobs: The victims of harassment were victimized, not because their antagonists learned their identities through the disclosure

laws, but because they found it out some other way. Ergo, the state concludes, there is a gap in the evidence and the case for the likelihood of harassment is not made out.

The State's argument on this point is wrong for three reasons. First, it misreads, or fails to read, Buckley v. Valeo on the reason why circumstantial evidence instead of a blanket exemption is appropriate in a case like this:

> "A minor party, particularly a new party, may never be able to prove a substantial threat of harassment, however real that threat may be, because it would be required to come forward with witnesses who are too fearful to contribute but not too fearful to testify about their fears. A strict requirement that chill and harassment be directly attributable to the specific disclosure from which the exemption is sought would make the task even more difficult." 424 U.S. at 73, 74.

Secondly, as the District Court noted, no names and addresses have yet been disclosed by the SWP in Ohio; hence the practical necessity for circumstantial evidence in a case like this one.

The third and fundamental reason the argument not only misses the point but in fact supports the plaintiffs' case, is that it highlights the realities of identification with the SWP. The State's insistence that such identification is sometimes made by means other than a disclosure law reinforces the District Court's conclusion that compelled disclosure is dangerous and impinges on protected First Amendment associational rights. For the point of the plaintiffs' case is to allow people who have not willingly "gone public", to contribute to SWP campaigns with confidence that they will not be added to the list of those unwillingly harassed or injured.

C. The Evidence Establishes The Reasonable Probability Of Harrassment, Prospectively, And In Ohio.

There are two other themes in the State's attack on the sufficiency of the evidence: the claim that some or much of the evidence is "stale", and the claim that evidence about what happens outside Ohio is irrelevant.

Both arguments are given a seeming plausibility by their association with accurate observations. Thus plaintiffs agree that on the issue of harassment, what is important is the prospective likelihood of harassment. But it does not follow, as the State would have it follow, that evidence of past harassment is irrelevant on either that issue, or obviously, on the question of the challenged statute's chilling effect on the exercise of associational freedom by SWP supporters. Even more to the point

however is the fact that there is an abundance of extremely recent evidence which the State artfully tries to belittle by setting up the comparison with the past.

Similarly, the State insists that the issue is the likelihood, in Ohio, of threats, reprisals and harassment. Plaintiffs agree. But it does not follow that evidence of what happens outside of Ohio is irrelevant on the issues of public and private hostility, likelihood of injury and "chilling" effect within Ohio.

The very same two points were raised by some (but not even all) the state defendants in the 1981 case in which the Federal District Court in Illinois enjoined application to the SWP of the Illinois disclosure law. 1980 Illinois Socialist Workers Campaign v. State of Illinois Board of Elections (No. 81 C

1919 N.D. Ill. Nov. 30, 1981.) "His [the Illinois Attorney General's] position is based on the argument that evidence of acts against the SWP outside Illinois are irrelevant and that no 'present' evidence of threats or harassment are included in the record." The Illinois District Court's reaction:

> "We find this position incredible, and wholly without support either in law or or these facts."

1) The evidence is contemporary, not "historic" or "stale".

What makes the State's position "incredible" and "wholly without support"? We treat the so-called "stale" evidence objection first. The premise for its position on this point is the State's characterization of the documentary evidence: "Much of the material relates to a period of time ten

to twenty years in the past." [App. Br. 7] But the fact is that plaintiffs conclusively demonstrated continuous FBI interference in the SWP's political activities up until at least 1976 two years after this case was filed. [JA 99]

What is the significance of 1976 itself as a cut-off date? The record in this case shows the FBI's routine hostility toward the SWP until at least 1978. [JA 94-95] Announcement of the termination of the FBI investigation occurred only after the firestorm of public criticism of the FBI during the Watergate years, and after three years of pre-trial discovery in Socialist Workers Party v. Attorney General (D.C.S.D.N.Y. 73 Civ. 3160 (TPG)) which had resulted in sensational revelations of FBI wrongdoing against the SWP, including the July 1976 arrest of FBI informer Timothy Redfearn who had burglarized the SWP's Denver

offices. [Id. 458 F. Supp. 895, 903-06 (S.D. N.Y. 1978), vacated on other grounds 596 F.2d 58 (2d Cir. 1979), cert. denied. 444 U.S. 903 (1979) Voluntary cessation of FBI activities against the SWP, pendente lite, provides no assurance that such activities wil not recur after a decision in the New York case, the trial of which was completed in June 1981.

Indeed past harassment is circumstantial evidence of continuing harassment. Plaintiffs have proven recent instances of loss of jobs in Ohio and Georgia on account of SWP membership. There are two plausible explanations: 1) private hostility, in corporate America, toward an organization whose purpose is "the abolition of capitalism"; and 2) government hostility toward an organization dedicated to replacing government as we know it with

"a worker's government to achieve socialism."

These explanations are not mutally exclusive. The likelihood of the first does not diminish the probability of the second. It must be remembered that it was the government's long range objective to identify SWP members "because they might eventually apply for positions in government or key private industries." How in fact did Alcoa know that Haberbush and Fitzgerald were SWP members? They neither talked nor acted politically at Alcoa. Information to link them together at all, and to identify them as SWP members had to come from somewhere outside that plant. The federal government has for years made it its business to watch the SWP and its members. Past federal-corporate partnership in anti-SWP activity is amply reflected in this record and supports the

inference of a federal role in these 1980-81 firings.

Furthermore, in assessing the significance of the so-called "stale" documentary evidence, it is helpful to compare the situation of the SWP today with that of a hypothetical minor party which had never been on the Attorney General's List, had never been considered "the largest and probably the best organized revolutionary organization in the U.S." and which had never been targeted under the government's notorious COINTELPRO operation. The comparison is even more realistic if the hypothetical party had not in the past (and at present) stood for abolishing capitalism. Would potential contributors to such a hypothetical party be more chilled, or less chilled, than SWP contributors, in the light of actual record evidence in this case? The answer

is obvious; the relevance of the "past harassment" evidence is self-evident. "[R]ecent public disclosure of past government harassment presents a chilling reminder to those who might support this unpopular cause in the future." Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F. Supp. at 548.

In this connection, the State relies on Laird v. Tatum, 408 U.S. 1 (1972) in asserting that "'Allegations of a subjective "chill" are not an adequate substitute for a claim of specific present objective harm or threat of specific future harm. . .'" [App. Br. 19] The State's reliance upon Laird v. Tatum is misplaced. Proof of "subjective chill" is only a minor part of plaintiff's case in light of the abundance of concrete evidence establishing what O'Shea v. Littleton, 414 U.S. 488 (1974) referred to as the

"continuing, present adverse effects" of past harassment. 414 U.S. at 495-96.

Legal recognition that the past is prologue is found in the law's treatment of business "good will" as a capital asset which doesn't disappear overnight. In this case the "stale" evidence documents the FBI's enormous investment in creating "bad will" and widespead hostility among the public toward the SWP. It would be unrealistic to speculate, as the State urges the Court to speculate, that the bad will toward the SWP generated by decades of overt and covert government harassment has now disappeared.

But the ultimate answer of course to the "stale" evidence point is the 1980 and 1981 evidence of twenty-two people fired, plus the gun shots, assaults and batteries, car and literature burnings, etc., and phone calls threatening more of the same.

2) The evidence proves extensive harassment in Ohio and nationally.

The State's other main contention, that proof of harassment of SWP members outside Ohio is not relevant, is also without merit. There is no reason to believe that Ohio's borders are an impenetrable wall, isolating it from the political life of the rest of the nation. Today's society is highly mobile. Federal and state police agencies coordinate their operations throughout the country. The public in Ohio obtains the same information from the national media through television, wire services and magazines, as it does in other states.

The State suggests no particular reason to support its bald proposition that the non-Ohio evidence doesn't count. The proposition on the face of it is "incredible" as the Illinois court

said. The State's argument is also inconsistent with the practice of courts all over the country in analogous situations in which public attitudes, and the likelihood of the public's future behavior is relevant. Thus in trademark infringement cases, an injunction of nation-wide scope is normally and regularly issued on the basis of evidence of public confusion in just one or a few jurisdictions. American Association For The Advancement of Science v. The Hearst Corp., 498 F. Supp. 244 (D. D.C. 1980); Union Carbide Corp. v. Ever-Ready Inc., 531 F.2d, 366 (7th Cir. 1976); Roto-Rooter Corp. v. O'Neil, 513 F.2d 44 (5th Cir. 1975); World Carpets Inc. v. Dick Litrells New World Carpets, 438 F.2d 482 (5th Cir. 1971). The premise for such decisions is that there is no reason to think that if Americans are fooled by a deceptive trademark in one place, they

wont be fooled elsewhere as well. Similarly, injunctions have been issued prohibiting rock concerts on the basis of evidence about public behavior at rock concerts in other states. Planning and Zoning Commission v. Zemel Bros. Inc., 270 A.2d 562 (1970 Conn.); County of Sullivan v. Fillippo, 315 NYS 2d 519 (N.Y. Sup. Ct. 1970); Drew v. Town-Moc, Inc., 304 NYS 2d 1003 (N.Y. Sup. Ct. 1969). In calculating the likelihood of the public's behavior within their jurisdictions in the future, courts have never made believe that the world came to an end at the state line. Adoption of the State's position would set a peculiar precedent.

However, even if the out-of-state evidence of firings, violence and other injury connected to support for the SWP were not considered, or sharply discounted, the recent in-state Ohio

evidence itself sustains the District Court's finding that "in Ohio, public disclosure that a person is a member or has made a contribution to the SWP would create a reasonable probability that he our she would be subjected to threats, harassment or reprisals." (Emphasis added) [JS A-27]

Plaintiffs proved that approximately 7% (4/60) of the SWP members had been fired in one year alone, in Ohio, on account of SWP membership. If translated into major party proportions, that would mean thousands of Democratics and Republicans in Ohio would lose their jobs, annually, on account of political hostility. There is also the evidence of physical violence. Assaults preceeded the firings in Cincinnati. And the intervention of the police (at the SWP's request) may have prevented in Cleveland the armed attack and shooting that

occurred shortly thereafter in Pittsburgh (which, incidentally is actually closer to Cleveland than are Cincinnati, Columbus and Dayton, Ohio). Recent threats made in Ohio, face to face, and on the telephone also demonstrate public hostility, and the likelihood of injury through disclosure.

Even if Ohio were an island instead of a midwestern state, the purely Ohio evidence establishes the reasonable probability, in Ohio and prospectively, of threats, reprisals and harassment if disclosure is compelled.

D) Every type of appropriate evidence was introduced.

The State's final theory is that the decision below is wrong because "no evidence was introduced before the District Court showing harassment of individuals resulting from their signature of nominating petitions of

Socialist Worker Party candidates in Ohio during recent years." [App. Br. 22]

The first thing to keep in mind about this "nominating petition" argument is that in Ohio the official nominating petition does not state a party name. [App. Br. A-3] The words "Socialist Workers Party" do not appear anywhere on the form. Members of the public who sign in order to help an individual SWP candidate get on the ballot do not directly and publicly identify themselves with the SWP as such. And the realities of signature gathering, in casual encounters on street courners, at bus stops and in shopping centers suggests caution in reading into the act of signing a very high level of commitment to the SWP or its goals. Actually putting up some money is very different.

What is the significance of the absence of evidence that the people who do sign are harassed? The absence of evidence, of course, does not mean that they are not harassed. But because their contact with the SWP is so fleeting and random, it is questionable whether the SWP would ever learn about the harassment, even if the signer did discover why he or she had been victimized. The standard of proof which the State's argument on this point would impose would require a minor party to come up with precisely the evidence that it is least likely ever to be able to obtain. And the imposition of that standard would force minor parties which wanted to qualify for an exemption from disclosure to check up periodically on all the people good enough to have signed a petition, asking: "Have bad things happened to you recently, as a result of

signing our petition?" To force minor parties themselves to go about spreading "chill" and apprehension among the public about the dangers of associating with them would make a mockery of Buckley v. Valeo's "flexibility" in proof rule. Furthermore, lack of resources to conduct a massive interview campaign would frustrate not only the SWP but probably every other minor party which had to bring in such proof as a condition to the exercise of its right not to disclose its contributors' names.

The evidence plaintiffs did present was the kind the Court in Buckley said was appropriate for establishing exemption from a disclosure law. The absence of "nominating petition" evidence is a false issue.

The uncontroverted evidence is so abundant that if the Socialist Workers Party, on this trial record, and with its

history, does not meet the constitutional standard for exemption from the Ohio disclosure law, then no party ever will.

IV

THE OHIO CAMPAIGN EXPENSE REPORTING LAW IS UNCONSTITUTIONAL ON ITS FACE BECAUSE IT HAS NO RATIONAL MONETARY THRESHOLD FOR DISCLOSURE AND THUS COMPELS REPORTING OF CONTRIBUTIONS AND EXPENDITURES WHOSE DISCLOSURE IS NOT SUPPORTED BY ANY STATE INTEREST.

This case presents the question left unanswered in Buckley v. Valeo: "[W]hether information concerning gifts [of less than $100] can be made available to the public without trespassing impermissibly on First Amendment rights." Buckley at 84.

Plaintiffs presented the claim of facial unconstitutionality in their complaint (¶ 55). The District Court denied plaintiff's motion for summary

judgment on this claim in its order of April 1, 1976, and did not discuss it further in its Opinion of June 25, 1981. The claim affords an alternative basis for affirming the judgment of the District Court. United States v. American Railway Express Co., 265 U.S. 425, 435 (1924).

The Federal Campaign Expense Law at issue in Buckley required the keeping of records of contributions between $10 and $100, but public disclosure only of gifts larger than $100 (the federal law has been amended and today only requires public disclosure of gifts over $200.)

The state election law challenged in this case differs from the federal law in two significant ways. The Ohio law has no threshold for disclosure. Even $5, $10, or $15 contributions must be reported and made public. There are no real exceptions. The twenty-five dollar

"fund raiser" exception itself requires a public appearance as an alternative to official public reporting.

The other pertinent difference between Ohio law and federal election law is that in Ohio there are no statutory limits on the amount that an individual can contribute to an election campaign. Therefore there can be no "violations" of contribution limitations, and hence no government interest in detecting "violations." However, detection of violations was one of the three government interests identified in Buckley as justifying the federal law's infringment on First Amendment associational rights. In Ohio, then, only two of the government interests exist, and the justification for First Amendment infringement is pro tanto reduced.

Thus the Ohio law in requiring disclosure of even petty contributions invades First Amendment rights more severely than federal law, and does so with much less justification, in terms of state interests served, than the federal law.

The constitutional test was stated in Gibson v. Florida Legislation Investigation Committee, 372 U.S. 539 (1962):

> "[I]t is an essential prerequisite to the validity of [state action] which intrudes into the area of the constitutionally protected rights of speech, press, association and petition that the state convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest." 372 U.S. at 546.

Put another way:

> "[E]ven though the governmental purpose be legitimate and substantial,

> that purpose can not be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose." Shelton v. Tucker, 364 U.S. 479, at 488.
>
> "Precision of regulation must be the touchstone in an area so closely touching on our most precious freedoms." NAACP v. Button, 371 U.S. 415 (1963).

The State concedes that regulations which cause significant interferences with associational privacy must be "closely drawn." [App. Br. 14]

The question is, what is Ohio's "compelling" interest in compelled disclosure of the fact that an individual has contributed $5, $10, or $15 to an election campaign? The record below contains nothing that supports the existence of such an interest. How could

it? Would even the humblest candidate be corrupted by such a contribution? Does the public care who makes a nominal contribution to a campaign? The state interest would seem to be just the opposite: To avoid cluttering the official records with so much chaff that the really interesting donations are lost in the mass of trivia which the Ohio law accumulates.

While the state's requirement that all contributions be disclosed to the public has no "relevant correlation" or "substantial relation" to real governmental interests, Buckley at 64, the harm done to small contributors is real.

> "It is undoubtedly true that public disclosure of contributions to candidates and political parties will deter some individuals who otherwise might contribute. In some instances, disclosure might even expose contributors to

> harassment or retaliation. These are not insignificant burdens on individual rights. . . . " Buckley at 68.

Pollard v. Roberts, 283 F. Supp. 248 (E.D. Ark.) (three-judge court), affd, 393 U.S. 14 (1968)) reasoned that it would be "naive" not to recognize that disclosure would subject some contributors to "reprisals of varying degrees of severity." Pollard at 258. In Pollard the Republicans were the potential victims.

In Ohio the people hurt are ordinary citizens whose nominal contributions are more a form of symbolic speech than financial support, and who may not contribute at all if they can foresee being hurt as a result. Disclosure undoubtedly deters contributions. Pollard at 258; Buckley at 68.

The Ohio law is clearly unconstitutional. While Buckley did not

reach the question of the validity of disclosure of contributions under one hundred dollars, its discussion of the constitutionality of the then one hundred dollar federal threshhold shows that it was assumed that some threshhold was required to meet minimum rationality standards. "We can not say on this bare record that the limits designated are wholly without rationality." Buckley, at 83. "Congress is not required to set a threshhold that is tailored only to the" goals of corruption prevention, and enforcement of contributions limitations. Id. Some "reasonable mark" had to be set, and one hundred dollars was "within the 'reasonable latitude' given to the legislature." Buckley at 83, 84.

The absence of any threshhold for disclosure has no rational basis. The Ohio law is a classic example of state

legislation, in the First Amendment area, which ignores "less drastic means" available for achieving the same goals, and substitutes the dragnet approach for "precision of regulation." Shelton v. Tucker, 364 U.S. at 488; NAACP v. Button, 371 U.S. at 438.

California Bankers Association v. Schultz, 416 U.S. 21 (1974) is a good example of the Court's insistence that laws which strike at privacy must be narrowly drawn. In upholding certain financial reporting rules the Court said:

> "The reports of foreign financial transactions required by the regulations must contain information as to a relatively limited group of financial transactions in foreign commerce, and are reasonably related to the statutory purpose of assisting in the enforcement of the laws of the United States. * * * The regulations are sufficiently tailored so as to single out transactions found to have the

> greatest potential for such circumvention [of the criminal law] and which involve substantial amounts of money. They are therefore reasonable in the light of that statutory purpose, and consistent with the Fourth Amendment." 416 U.S. at 62-63.

The regulations upheld in California Bankers required individuals to report foreign transactions involving monetary instruments worth $5000 or more. Associational privacy rights were not even asserted by most plaintiffs. Nevertheless the Court required great precision and care in narrowly focusing the statute and regulations. The contrast with the Ohio statutes' blunt, cavalier demand for the names and addresses of all contributors of campaign funds, in any amount, is clear.

Ohio itself has demonstrated the capacity to enact reasonable regulations in a closely analogous area. The State's

recent requirement of an ethical disclosure statement from candidates for Congress and state, county and city offices contains a realistic assessment of amounts which could subject candidates to influence. [Exh A-1, § 102.02]. The statements must list income and gift sources over five hundred dollars, together with investments and debts over one thousand dollars. There is no reason that Ohio's Campaign Expense Reporting Law could not apply the same or similarly "rational" disclosure requirements to small contributors that § 102.02 affords to people such as clients much more closely associated with candidates for office.

The vast majority of other states have legislated rationally in this area. Only five other states -- Maryland, Minnesota, New Mexico, Utah and West Virginia -- have not established minimums

for contributions which must be reported. Thirty-five states and the District of Columbia have minimums ranging from twenty to two hundred dollars. Some use figures which are still higher -- two hundred fifty dollars in Arkansas; five hundred dollars in Nevada; and one thousand dollars in Louisiana. See Appendix herein. The national consensus is that nominal contributions do not pose any significant potential for actual or apparent corruption and that reporting nominal contributions, in their vast quantities, does not serve the "informed electorate" goal of disclosure laws.

Ohio also mandates that all expenditures be reported. It is hard to see how recording the purchase of a soft drink, or the reimbursement of carfare would relate to the intersts which Ohio asserts. In many instances, the

reporting of small expenditures would reveal the identities of rank and file supporters who are repaid their expenses. Expenditure reporting thus implicates the same privacy interests discussed above. The absence of a threshhold for reporting expenditures is more common: there are no threshholds in seventeen states. See Appendix. But there is no reasonable basis for requiring that nominal expenditures be reported.

Campaign finance disclosure laws, on the whole serve valid public interests. But,

> "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repeal invasion of their liberty by evil minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding."

Brandeis, dissenting in Olmstead v. U.S. 277 U.S. 438 (1928), at 479.

CONCLUSION

The decision of the District Court should be affirmed because the Ohio Campaign Expense Reporting Law is unconstitutional as applied to the plaintiffs or, in the alternative, because it is unconstitutional on its face.

Thomas D. Buckley, Jr.
Gordon J. Beggs
American Civil Liberties
Union of Cleveland
Foundation
1223 West Sixth Street
Cleveland, Ohio 44113
(216) 687-2309
(216) 781 6276

Ben Sheerer
Suite 611
614 Superior Avenue West
Cleveland, Ohio 44113

Bruce Campbell
360 South Third Street
Columbus, Ohio 43215

Attorneys for Appellees

APPENDIX

DISTRICT OF COLUMBIA AND STATE THRESHOLDS FOR DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

THRESHOLDS

1/ State
2/ Contributions
3/ Expenditures
4/ Source

1/	2/	3/	4/
AL	$ 10	$ 5	§17-22-10
AK	100	100	§15.13.040
AZ	25	0	§16-907,913
AR	250	25	§3-111
CA	100	100	Gov't Code §8421
CO	25	25	§1-45-108
CT	30	0	§9-348h
DE	100	100	§8007
DC	50	10	Tit 15 §1-1416
FL	100	0	§106.07
GA	101	101	§40-3806
HA	100	0	§§11-199,212,213
ID	50	25	§67-6612
IL	150	150	Ch.46,§9-13

IN	100	100	§3-4-6-9
IA	100	5	§56.6
KS	25	25	§25-4108
KY	100	50	§121.180
LA	1000	200	§§18.1491.6,7
ME	50	0	Tit.21,§1397
MD	0	0	Art.33,§§26-11,12
MA	25	25	Ch.55,§18
MI	20	0	§169,229
MN	0	0	§210A,26
MS	200	250	§§23-3-41,43
MO	50	50	§130.041
MT	25	0	§§13-37-229,230
NV	500	0	§294A.010,.020
NJ	100	0	§19:44A-16,18 Admin.Code §19.25-12.1
NM	0	0	§1-19-31
NY	99	50	Election Law §14-102
NC	100	25	§163-278,8,9,11
ND	100	N/A	§§16.1-02,08
OH	0	0	§§3517.10,.11
OK	200	0	§15-103,106

OR	50	100	§260.083
PA	50	0	Tit.25 §3246
RI	200	25	§17-25-11
SC	100	N/A	§8-13-620
SD	100	0	§12-25-13
TN	100	100	§2-10-107
TX	50	50	Election Code §14.07
UT	0	0	§20-14-8
VT	25	0	Tit.17,§2052
VA	100	100	§24.1-258
WA	10	25	§42.17.090
WV	0	0	§3-8-5a
WI	20	20	§11.06

Appellant's Reply Brief

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OCTOBER TERM, 1981

TED W. BROWN, et al.,

Appellants,

v.

SOCIALIST WORKERS '74 CAMPAIGN COMMITTEE (Ohio), et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

REPLY BRIEF FOR APPELLANTS

WILLIAM J. BROWN
Attorney General of Ohio

GARY ELSON BROWN
Assistant Attorney General
Counsel of Record

JAMES R. RISHEL
Chief Counsel to the Attorney General of Ohio

State Office Tower
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 466-8600

Attorneys for Appellants

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II. The District Court erred when it held unconstitutional, as applied, those portions of Ohio Revised Code Section 3517.10 which require that a candidate's campaign committee disclose the full name and address of each person receiving an expenditure from the SWP candidate's committee. 6

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REPLY BRIEF FOR APPELLANTS

ARGUMENT

I

THE EVIDENCE PRESENTED IN THE DISTRICT COURT DOES NOT DEMONSTRATE A REASONABLE PROBABILITY THAT THE DISCLOSURE OF THE NAMES OF CONTRIBUTORS TO SOCIALIST WORKERS PARTY CANDIDATES IN OHIO OR THE DISCLOSURE OF THE NAMES OF PERSONS RECEIVING FUNDS FROM A SOCIALIST WORKERS PARTY CANDIDATE'S CAMPAIGN COMMITTEE WOULD SUBJECT THOSE CONTRIBUTORS OR RECIPIENTS TO THREATS, HARASSMENTS OR REPRISALS.

The evidence presented by Appellees was insufficient to satisfy the test established by this Court in *Buckley v. Valeo,* 424 U.S. 1 (1976). The reiteration of the evidence as set forth in the Appellees' brief demonstrates the lack of direct, probative and substantive evidence involved in this case.

Despite joining unnamed "John Doe" plaintiffs who allegedly contributed to or received campaign funds from Socialist Workers Party candidates, Appellees produced no evidence in the District Court of any actual or threatened harassment of a contributor or recipient. Indeed, no contributor or recipient was even called to testify as such at trial.

Nor did the Appellees produce any evidence that any person who had signed a nominating petition for a

Socialist Workers Party candidate had suffered threats, harassment or reprisals as a result of having signed the nominating peititon. The lack of such evidence is particularly telling because nominating petitions, like campaign contribution and expenditure reports, contain the name and address of each person signing the petition and are filed and maintained in the offices of the Secretary of State of Ohio or the Board of Elections of the applicable county. The absence of any evidence of threats, harassment or reprisals to persons signing nominating petitions demonstrates that threats, harassment and reprisals to contributors or recipients of expenditures is equally unlikely.

Appellees contend that the absence of "nominating petition evidence" is a false issue because an official nominating petition in Ohio does not state the party of the candidate. That contention is spurious because the appearance of the party label in the nominating petition is irrelevant to the issue of the probability of resulting harassment. What is relevant is the degree of difficulty required to discover the information which would facilitate threats, harassment or reprisals, i.e., names and addresses. In Ohio, nominating peititons and campaign finance and expenditure reports are public documents on file in the same location. The effort required to discover the names of persons supporting Socialist Workers Party candidates by signing nominating petitions is identical to the effort required to discover the names and addresses of persons making campaign contributions to Socialist Workers Party candidates. Despite the fact that thousands of Ohioans have signed petitions supporting Socialist Worker Party candidates, Appellees failed to produce one single person who had suffered harassment as a result of signing a nominating petition.

The vast majority of the evidence introduced by Appellees in this case pertains to past activities of agencies of the federal government over which the State

of Ohio had absolutely no control. Moreover, the activities of these federal agencies took place irrespective of and in the absence of Ohio's Campaign Expense Reporting Act. A review of the arguments contained in the Appellees' brief demonstrates that they would have precious little evidence if the FBI had not targeted the Socialist Workers Party for extensive coverage during the 1950's, 1960's and early 1970's. Out of the 133 exhibits offered at trial by the Appellees, 127 were admitted into evidence. One hundred and twenty-one (121) of these 127 exhibits pertain solely to FBI activities. However, the FBI activities which were the basis for that evidence were discontinued in 1971. Indeed, Appellees concede at page 71 of their brief that the FBI's investigation has terminated. Clearly, the FBI's program of disruption and harassment is no longer a threat to the Socialist Workers Party or any other law abiding group. *See: Final Report of the Select Committee to Study Government Operations with Respect to Intelligence Activities,* S.Rep. No. 755, 94th Cong., 2nd Sess. (1976) ("Senate Report").

One problem created by a strict application of the *Buckley* test is that it does not consider nor provide guidance as to what a court should do with evidence of past governmental improprieties when it is also a proven fact that the past governmental improprieties are no longer taking place and are unlikely to reoccur. Rather, *Buckley* only requires the consideration of evidence of past harassment alone without any reference to the continuous nature of the inappropriate governmental activity.

Such a consideration would have made a great deal of difference in this case for all of the past federal governmental activities which, according to the District Court, constituted past harassment had long since been discontinued. If the *Buckley* test is refined to incorporate this reality, then the above referenced Senate Report becomes even more relevant. In its review, Congress found that

the mainstream of harassing FBI activities was officially terminated on April 27, 1971. *Id.* at Book III, p. 13. Congress also found (1) that the use of "black bag jobs" (break-ins to obtain documents) was discontinued in 1966, *Id.* at 365; (2) that the Internal Revenue Service's Harassment Program was discontinued in 1973, *Id.* at 842; and, (3) that the FBI's mail opening program was discontinued in mid-1966, and the CIA's in mid-February, 1973, *Id.* at 634. Congress, recognizing that the FBI might recommence these activities, has enacted legislation to insure that such FBI harassment will not occur in the future. *See e.g.,* Intelligence Authorization Act, Section 5, 50 U.S.C. Section 413 (1980). Clearly, these recent developments indicate that the past federal governmental harassment detailed by Appellees is no longer a present threat and is highly unlikely to occur in the future.

If reference to the FBI and the multitude of its "real" or "alleged" improprieties were deleted from Appellees' brief there would be nothing left of their argument but a small collection of isolated and unrelated instances of verbal and illegal physical abuse of Socialist Workers Party members, candidates, and party headquarters around the country along with a very limited number of employment terminations which have more to do with inappropriate behavior "on the job" than with political beliefs or even political conduct. While this evidence might demonstrate a risk of reprisal to the most active and vocal Socialist Workers Party members and candidates, it does not prove a reasonable probability of such reprisals to those who contribute or receive expenditures from Socialist Workers Party candidates which is what the *Buckley* test clearly requires.

II

THE DISTRICT COURT ERRED WHEN IT HELD UNCONSTITUTIONAL, AS APPLIED, THOSE PORTIONS OF OHIO REVISED CODE SECTION 3517.10 WHICH REQUIRE THAT A CANDIDATE'S CAMPAIGN COMMITTEE DISCLOSE THE FULL NAME AND ADDRESS OF EACH PERSON RECEIVING AN EXPENDITURE FROM THE SWP CANDIDATE'S CAMPAIGN COMMITTEE.

The District Court held that the requirements of Sections 3517.10 and 3517.11, Ohio Revised Code, are unconstitutional as applied to SWP candidates' campaign committees insofar as they require them to list the full name and address of each person who either: (1) makes a contribution to, or, (2) *receives a disbursement from the committee. Socialist Workers '74 Campaign Committee v. Brown,* J.S. App. A-29. In reaching its decision the District Court relied exclusively on the discussion in the *Buckley* Opinion concerning minor party exemptions from disclosure laws.

However, this Court in *Buckley v. Valeo* dealt only with "contributions to minor parties". 424 U.S. at 68-69. Indeed, the test set forth in *Buckley* is designed to protect only contributors' identities and not the identity of those persons receiving disbursements:

> The evidence offered need only show a reasonable probability that the compelled disclosure of a party's *contributors'* names will subject *them* to threats, harassment, or reprisals from either government officials or private parties.

Id. at 74 (emphasis added).

Nowhere in *Buckley* does this Court discuss the exemption of minor party candidates from disclosing the identities of those persons receiving disbursements, let alone establish a right and a framework for the exemption of such persons. By assuming otherwise and applying the *Buckley* test to exempt Appellees from fully disclosing the information in their disbursement records, the District Court committed a significant error. As can be seen by examining the more common types of disbursements made by a political party or a campaign committee, no sufficient reason exists for exempting a minor party from disclosing the names and addresses of its disbursement recipients.

Such payments would generally include payment for business operations such as office rental, utilities expenses, clerical expenses, employees' salaries, travel expenses, printing costs, and various media expenditures. Obviously, these sorts of expenditures involve commercial transactions which do not directly interrelate with constitutional rights of association. As pointed out by this Court in *Abood v. Detroit Board of Education,* 431 U.S. 209 (1977), it is "the freedom to associate for the purpose of advancing beliefs and ideas [that] is protected by the First and Fourteenth Amendments". *Id.* at 233. *See also, NAACP v. Alabama,* 357 U.S. 449, 460-461 (1958). However, expenditures by minor party candidates to various vendors do not involve an association for the purpose of advancing political beliefs or ideas. Rather, they associate merely to carry out business transactions.

It cannot be disputed that there are compelling policy reasons for requiring the disclosure of disbursement information. Campaign disbursements offer an obvious potential for abuse. Full disclosure curbs practices such as slush funds, dirty tricks, bribes and other violations of campaign laws.

In view of the foregoing reasoning the District Court erred by exempting the SWP from the provisions of Sections 3517.10 and 3517.11, Ohio Revised Code, which require political parties and campaign committees to disclose the names and addresses of persons receiving disbursements.

III

THE APPELLEES CANNOT NOW ARGUE THAT THE OHIO CAMPAIGN EXPENSE REPORTING ACT IS UNCONSTITUTIONAL ON ITS FACE BECAUSE THEY DID NOT FILE A CROSS APPEAL IN THIS CASE.

In Section IV of their brief, Appellees have incorrectly attempted to present the argument that Ohio's Campaign Expense Reporting Act is unconstitutional on its face. Appellees did not file a cross appeal on that issue and cannot now present this argument.

Appellees raised the issue of the facial unconstitutionality of the Act in their Complaint and in a Motion for Summary Judgment which was denied by the District Court in an Order dated April 21, 1976. Appellees have filed no appeal from that Order.

The District Court in this case declared Sections 3517.10(B)(4)(b), (5)(b) and 3517.11, Ohio Revised Code, unconstitutional *as applied* to the Appellee class and enjoined Appellants from requiring members of the Appellee class to comply with the disclosure requirements contained in these statutes. *See,* Judgment, J.S. App. A-29. The District Court did not address the question of the facial constitutionality of the Act in its

Judgment dated June 25, 1981. *See* J.S. App. A-29. To now permit the Appellees to argue that the Act is unconstitutional on its face would require this Court to expand the narrow relief granted by the District Court. This request is clearly barred by the provisions of Rule 10.5 of the Revised Rules of the Supreme Court of the United States which states:

> The Court may permit an Appellee, without filing a cross appeal, to defend a judgment on any ground that the law and record permit and that would not expand the relief he has been granted.

If Appellees desired to properly present the issue of facial unconstitutionality for this Court's consideration, they were required to file a cross appeal in accordance with Rule 12.4 of the Revised Rules of the Supreme Court of the United States.

The Appellees elected not to file such a cross appeal and are therefore barred from seeking a declaration of facial unconstitutionality in this case. *See generally, Head v. New Mexico Board of Examiners in Optometry,* 473 U.S. 424 (1963); *See also, Quilloin v. Walcott,* 434 U.S. 246 (1978).

CONCLUSION

The judgment of the District Court is in conflict with the standards set forth by this Court in *Buckley v. Valeo* and, as such, must be reversed.

Respectfully submitted,

WILLIAM J. BROWN
Attorney General of Ohio

GARY ELSON BROWN
Assistant Attorney General
Counsel of Record

JAMES R. RISHEL
Chief Counsel to the Attorney General of Ohio

State Office Tower
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 466-8600

Attorneys for Appellants

Docket Sheet

NO. 81-776-ATX	TITLE	Ted W. BROWN, et al., Appellants v. Socialist Workers '74 Campaign Committee (Ohio), et al.

DOCKETED	COURT
Oct. 20, 1981	United States District Court for the Southern District of Ohio

DATE	PROCEEDINGS AND ORDERS
	Counsel for Appellants: ~~Thomas F. Staub~~ Gary E. Brown
	Counsel for Appellees: Gordon Beggs, Bruce A. Campbell Thomas D. Buckley, Jr.
Oct. 20, 1981	Statement as to jurisdiction filed. (Record filed).
Nov. 20, 1981	Motion to affirm filed.
Nov. 24, 1981	DISTRIBUTED. 12-11.
Dec. 14, 1981	Probable jurisdicition NOTED.

Dec. 30, 1981	Order extending time to file the joint appendix and appellants' brief on the merits until Feb. 26, 1982.
March 4, 1982	Joint appendix filed.
March 4, 1982	Brief for the appellants filed.
March 30, 1982	Brief for the appellees filed.
July 13, 1982	CIRCULATED.
Sept. 24, 1982	Reply brief for the appellants filed. (D).
Oct. 4, 1982	ARGUED.

END OF DOCKET